

## Section VI. The Contractors State License Board; License Law, Rules and Regulations, and Related Laws

### Chapter 12. Contractors License Law

#### BUSINESS AND PROFESSIONS CODE DIVISION 3. CHAPTER 9. CONTRACTORS ARTICLE 1. ADMINISTRATION

##### Short Title

7000. This chapter constitutes, and may be cited as, the Contractors' State License Law.

##### Proof of Compliance with Local Business Tax Requirements; Limit on Business Taxes

7000.2. Nothing in this code shall be interpreted to prohibit cities, counties, and cities and counties from requiring contractors to show proof that they are in compliance with local business tax requirements of the entity prior to issuing any city, county, or city and county permit. Nothing in this code shall be interpreted to prohibit cities, counties, and cities and counties from denying the issuance of a permit to a licensed contractor who is not in compliance with local business tax requirements.

Any business tax required or collected as part of this process shall not exceed the amount of the license tax or license fee authorized by Section 37101 of the Government Code or Section 16000 of the Business and Professions Code.

*(Added by Stats. 1992, Chapter 325 (AB 2710).)*

##### Contractors' State License Board

*(Operative until July 1, 2003; Repealed January 1, 2004)*

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

*(Amended by Stats. 1994, Chapter 908 (SB 2036), operative until July 1, 1998; Stats. 1997, Chapter 812 (SB 857), Chapter 813 (SB 825); Stats. 1999, Chapter 656 (SB 1306), operative until July 1, 2001; Stats. 2000, Chapter 1005 (SB 2029), operative until July 1, 2003).)*

##### Qualification of Board Members

7001. All members of the board, except the public members, shall be contractors actively engaged in the contracting business, have been so engaged for a period of not less than five years preceding the date of their appointment and shall so continue in the contracting business during the term of their office. No one, except a public member, shall be eligible for appointment who does not at the time hold an unexpired license to operate as a contractor.

The public members shall not be licentiates of the board.

*(Amended by Stats. 2000, Chapter 1005 (SB 2029).)*

##### Membership of Board

7002. (a) One member of the board shall be a general engineering contractor, two members shall be general building contractors, two members shall be specialty contractors, one member shall be a member of a labor organization representing the building trades, one member shall be an active local building official, and eight members shall be public members, one of whom shall be from a statewide senior citizen organization.

(b) No public member shall be a current or former licensee of the board or a close family member of a licensee or be currently or formerly connected with the construction industry or have any financial interest in the business of a licensee of the board. Each public member shall meet all of the requirements for public membership on a board as set forth in Chapter 6 (commencing with Section 450) of Division 1. Notwithstanding the provisions of this subdivision and those of Section 450, a representative of a labor organization shall be eligible for appointment to serve as a public member of the board.

(c) Each contractor member of the board shall be of recognized standing in his or her branch of the contracting business and hold an unexpired license to operate as a contractor. In addition, each contractor member shall, as of the date of his or her appointment, be actively engaged in the contracting business and have been so engaged for a period of not less than five years. Each contractor member shall remain actively engaged in the contracting business during the entire term of his or her membership on the board.

(d) Each member of the board shall be at least 30 years of age and of good character. In addition, each member shall have been a citizen and resident of the State of California for at least five years next preceding his or her appointment.

(e) For the purposes of construing this article, the terms “general engineering contractor,” “general building contractor,” and “specialty contractor” shall have the meanings given in Article 4 (commencing with Section 7055) of this chapter.

(Amended by Stats. 1991, Chapter 1160 (AB 2190); Stats. 1994, Chapter 279 (AB 203); Stats. 2000, Chapter 1005 (SB 2029).)

### **Tenure; Qualifications; Appointment of Board Members; Vacancies**

7003. Except as otherwise provided, an appointment to fill a vacancy caused by the expiration of the term of office shall be for a term of four years and shall be filled, except for a vacancy in the term of a public member, by a member from the same branch of the contracting business as was the branch of the member whose term has expired. A vacancy in the term of a public member shall be filled by another public member. Each member shall hold office until the appointment and qualification of his or her

successor or until the office is deemed to be vacant pursuant to Section 1774 of the Government Code, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint four of the public members, including the public member who is from a statewide senior citizen organization, the local building official, the member of a labor organization representing the building trades, and the five contractor members qualified as provided in Section 7002. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members.

(Amended by Stats. 1991, Chapter 1160 (AB 2190); Stats. 1994, Chapter 279 (AB 203); Stats. 1999, Chapter 983 (SB 1307); Stats. 2000, Chapter 1005 (SB 2029).)

## **EXTRACT FROM THE GOVERNMENT CODE**

### **Vacancies; Appointments and Reappointments by the Governor and Senate**

1774. (a) When an office, the appointment to which is vested in the Governor and Senate, either becomes vacant or the term of the incumbent thereof expires, the Governor may appoint a person to the office or reappoint the incumbent after expiration of the term. Until Senate confirmation of the person appointed or reappointed, that person serves at the pleasure of the Governor. If the term of the office of an incumbent subject to this section expires, the Governor shall have 60 days after the expiration to reappoint the incumbent. If the incumbent is not reappointed within the 60-day period, the office shall be deemed to be vacant as of the first day following the end of the 60-day period.

(b) With respect to the appointment or reappointment by the Governor of a person to an office subject to confirmation by the Senate, the Governor shall submit the name of the person appointed, or the name of the incumbent reappointed, and the effective date of the appointment or reappointment to the Senate or, if the Senate is in recess or has adjourned, to the Secretary of the Senate, within 60 days after the person first began performing the duties of the office, or, as to the reappointment of an incumbent, within 90 days after the expiration date of the term. If the Governor does not provide the required notification within 60 days after the person first began performing the duties of the office, or, as to the reappointment of an incumbent to an office after the expiration date of the

term, within 90 days after the expiration of the term, the office shall be deemed to be vacant as of the first day immediately following the end of the applicable period.

(c) If the Senate either refuses to confirm, or fails to confirm within 365 days after the day the person first began performing the duties of the

office, or, with respect to an incumbent whose appointment to that office previously had been confirmed by the Senate and who is reappointed to

that office, within 365 days after the expiration date of the term, the following shall apply:

(1) If the Senate either refuses to confirm, the person may continue to serve in that office until 60 days have elapsed since the refusal to confirm or until 365 days have elapsed since the person first began performing the duties of the office, whichever occurs first, or with respect to an incumbent whose appointment to that office previously has been confirmed by the Senate and who is reappointed to that office, until 60 days have elapsed since refusal or until 365 days after the expiration date of the prior term, and the office for which the appointment was made shall be deemed to be vacant as of the first day immediately following the end of the applicable period.

(2) If the Senate fails to confirm within the applicable 365-day period, the person may not continue to serve in that office, and the office for which the appointment was made shall be deemed to be vacant as of the first day immediately following the end of the 365-day period.

## Removal

7005. The Governor may remove any member of the board for misconduct, incompetency or neglect of duty.

## Meetings

7006. The board shall meet at least once each calendar quarter for the purpose of transacting business as may properly come before it.

Special meetings of the board may be held at times as the board may provide in its bylaws. Four members of the board may call a special meeting at any time.

*(Amended by Stats. 2001, Chapter 728 (SB 724).)*

## Quorum

7007. Eight members constitute a quorum at a board meeting.

Due notice of each meeting and the time and place thereof shall be given each member in the manner provided by the bylaws.

*(Amended by Stats. 2000, Chapter 1005 (SB 2029).)*

## Committees; Rules and Regulations

7008. The board may appoint such committees and make such rules and regulations as are reasonably necessary to carry out the provisions of this chapter. Such rules and regulations shall be adopted in accordance with the provisions of the Administrative Procedure Act.

## Oaths

7009. Any member or committee of the board may administer oaths and may take testimony and proofs concerning all matters within the jurisdiction of the board.

## Power of Board

7010. The board is vested with all functions and duties relating to the administration of this chapter, except those functions and duties vested in the director under the provisions of Division I of this code.

## Registrar of Contractors

7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation.

The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.

For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer and, subject to Section 159.5, other assistants and subordinates as may be necessary.

Appointments shall be made in accordance with the provisions of civil service laws.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes

inoperative and is repealed.

*(Amended by Stats. 1994, Chapter 908 (SB 2036), operative until July 1, 1998; repealed by Stats. 1994, Chapter 908 (SB 2036), eff. January 1, 1999; amended by Stats. 1997, Chapter 812 (SB 857), Chapter 813 (SB 825); Stats. 1999, Chapter 656 (SB 1306), operative until July 1, 2001, repealed January 1, 2002; Stats. 2001, Chapter 615 (SB 26), eff. October 9, 2001.)*

## Prohibition Against Double Penalty for Same Offense

7011.3. The registrar shall not assess a civil penalty against a licensed contractor who has been assessed a specified civil penalty by the Labor Commissioner under Section 1020 or 1022 of the Labor Code for the same offense.

## Enforcement of Licensing Provisions

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement unit which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

(b) Persons employed as deputy registrars in this unit and designated by the Director of Consumer Affairs are not peace officers and are not entitled to safety member retirement benefits. They do not have the power of arrest. However, they may issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

*(Amended by Stats. 1994, Chapter 413 (SB 1694).)*

## Investigators; Authority of Peace Officers

7011.5. Persons employed as investigators of the Special Investigations Unit of the Contractors State License Board and designated by the Director of Consumer Affairs have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them in investigating the laws administered by the Contractors State License Board or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

## Investigation of Complaints; Qualification and Limitation

7011.7. Review and investigation of complaints; improvement of disciplinary system

(a) The registrar shall review and investigate complaints filed in a manner consistent with this chapter and the Budget Act. It is the intent of the Legislature that complaints be reviewed and investigated as promptly as resources allow.

(b) The board shall set as a goal the improvement of its disciplinary system so that an average of no more than six months elapses from the receipt of a complaint to the completion of an investigation.

(c) Notwithstanding subdivision (a), the goal for completing the review and investigation of complaints that, in the opinion of the board, involve complex fraud issues or complex contractual arrangements, should be no more than one year.

*(Amended by Stats. 1989, Chapter 1132, eff. Sept. 29, 1989; Stats. 2000, Chapter 1005 (SB 2029).)*

## EXTRACT FROM THE GOVERNMENT CODE

### Powers in Connection with Investigations and Actions

11181. In connection with any investigation or action authorized by this article, the department head may do any of the following:

- (a) Inspect books and records.
- (b) Hear complaints.
- (c) Administer oaths.
- (d) Certify to all official acts.
- (e) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to any inquiry, investigation, hearing or proceeding pertinent or action conducted in any part of the state.
- (f) Promulgate interrogatories pertinent or material to any inquiry, investigation, hearing, proceeding, or action.
- (g) Divulge evidence of unlawful activity discovered, pursuant to this article, from records or testimony not otherwise privileged or confidential, to the Attorney General or to any prosecuting attorney who has a responsibility for investigating the unlawful activity discovered, or to any governmental agency responsible for enforcing laws related to the unlawful activity discovered.

*(Amended by Stats. 2001, Chapter 74, (AB 260).)*

### Confidential Character of Information Acquired

11183. Except in a report to the head of the department or when called upon to testify in any court or proceeding at law or as provided in subdivision (f) of Section 11181, any officer who divulges any information acquired by the officer from the private books, documents or papers of any person while acting or claiming to act under any authorization pursuant to this article, in respect to the confidential or private transactions, property or business of any person is guilty of a misdemeanor and disqualified from acting in any official capacity in the department.

### False Complaints Against Contractors; Penalties; Reports

7011.8. (a) Any person who reports to, or causes a complaint to be filed with, the Contractors' State License Board that a person licensed by that entity has engaged in professional misconduct, knowing the report or complaint to be false, is guilty of an infraction punishable by a fine not to exceed one thousand dollars (\$1,000).

(b) The board may notify the appropriate district attorney or city attorney that a person has made or filed what the entity believes to be a false report or complaint against a licensee.

*(Added by Stats. 1992, Chapter 437 (AB 2966); amended by Stats. 2001, Chapter 745.)*

### Cooperation

7012. The registrar, with the approval of the board and the director, may, when funds are available, cooperate in the enforcement of governmental legislation relating to the construction industry, and, except as provided by Section 159.5, shall appoint such assistants as may be necessary therefor.

### Final Authority

7013. The board may in its discretion review and sustain or reverse by a majority vote any action or decision of the registrar.

This section shall apply to any action, decision, order, or proceeding of the registrar conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### Equipment

7014. The board may procure equipment and records necessary to carry out the provisions of this chapter.

### Seal

7015. The board shall adopt a seal for its own use. The seal shall have the words "Contractors' State License Board, State of California, Department of Consumer Affairs," and the care and custody thereof shall be in the hands of the registrar.

### Per Diem Expenses

7016. Each member of the board shall receive a per diem and expenses as provided in Section 103.

### Reports; Public Records

7017. The board, in addition to the usual periodic reports, shall within 30 days prior to the meeting of the general session of the Legislature submit to the Governor and the legislature a full and true report of its transactions during the preceding biennium including a complete statement of the receipts and expenditures of the board during the period.

A copy of the report shall be filed with the Secretary of State.

*(Amended by Stats. 2001, Chapter 745 (SB 1191).)*

### Notice to Owner

7018.5. (a) The board shall prescribe a form entitled "Notice to Owner" which shall state:

"Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's

subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

**TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:**

- (1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.
- (2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.
- (3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made

payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property."

(b) Each contractor licensed under this chapter, prior to entering into a contract with an owner for work specified as home improvement or swimming pool construction pursuant to Section 7159, shall give a copy of this "Notice to Owner" to the owner, the owner's agent, or the payer. The failure to provide this notice as required shall constitute grounds for disciplinary action.

*(Repealed; added by Stats. 1992, Chapter 788 (AB 2736).)*

**EXTRACT FROM THE CIVIL CODE  
DIVISION 3  
TITLE 15. WORKS OF IMPROVEMENT**

**“Preliminary 20-Day Notice (Private Work)”;  
Procedure**

3097. “Preliminary 20-day notice (private work)” means a written notice from a claimant that is given prior to the recording of a mechanic’s lien, prior to the filing of a stop notice, and prior to asserting a claim against a payment bond, and is required to be given under the following circumstances:

(a) Except one under direct contract with the owner or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or

entity to whom a portion of a laborer’s compensation is paid as described in subdivision (b) of Section 3089, every person who furnishes labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, payment bond, and of a notice to withhold, cause to be given to the owner or reputed owner, to the original contractor, or reputed contractor, and to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(b) Except the contractor, or one performing actual labor for wages as described in subdivision (a) of Section 3089,

or a person or entity to whom a portion of a laborer’s compensation is paid as described in subdivision (b) of Section 3089, all persons who have a direct contract with the owner and who furnish labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, claim on a payment bond, and of a notice to withhold, cause to be given to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(c) The preliminary notice referred to in subdivisions (a) and (b) shall contain the following information:

(1) A general description of the labor, service, equipment, or materials furnished, or to be furnished, and an estimate of the total price thereof.

(2) The name and address of the person furnishing that labor, service, equipment, or materials.

(3) The name of the person who contracted for purchase of that labor, service, equipment, or materials.

(4) A description of the jobsite sufficient for identification.

(5) The following statement in boldface type:

**NOTICE TO PROPERTY OWNER**

**If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic’s lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor, or (2) any other method or device that is appropriate under the circumstances.**

**(6) If the notice is given by a subcontractor who has failed to pay all compensation due to his or her laborers on the job, the notice shall also contain the identity and address of any laborer and any express trust fund to whom employer payments are due.**

**If an invoice for materials or certified payroll contains the information required by this section, a copy of the invoice, transmitted in the manner prescribed by this section shall be sufficient notice.**

**A certificated architect, registered engineer, or licensed land surveyor who has furnished services for the design of the work of improvement and who gives a preliminary notice as provided in this section not later than 20 days after the work of improvement has commenced shall be deemed to have complied with subdivisions (a) and (b) with respect to architectural, engineering, or surveying services furnished, or to be furnished.**

(d) The preliminary notice referred to in subdivisions (a) and (b) shall be given not later than 20 days after the claimant has first furnished labor, service, equipment, or materials to the jobsite. If labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a preliminary notice, that claimant shall

not be precluded from giving a preliminary notice at any time thereafter. The claimant shall, however, be entitled to record a lien, file a stop notice, and assert a claim against a payment bond only for labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter.

(e) Any agreement made or entered into by an owner, whereby the owner agrees to waive the rights or privileges conferred upon the owner by this section shall be void and of no effect.

(f) The notice required under this section may be served as follows:

(1) If the person to be notified resides in this state, by delivering the notice personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j).

(2) If the person to be notified does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender or to the original contractor.

(3) When service is made by first-class certified or registered mail, service is complete at the time of the deposit of that registered or certified mail.

(g) A person required by this section to give notice to the owner, to an original contractor, and to a person to whom a notice to withhold may be given, need give only one notice to the owner, to the original contractor, and to the person to whom a notice to withhold may be given with respect to all materials, services, labor, or equipment he or she furnishes for a work of improvement, that means the entire structure or scheme of improvements as a whole, unless the same is furnished under contracts with more than one subcontractor, in which event, the notice requirements shall be met with respect to materials, services, labor, or equipment furnished to each contractor.

If a notice contains a general description required by subdivision (a) or (b) of the materials, services, labor, or equipment furnished to the date of notice, it is not defective because, after that date, the person giving notice furnishes materials, services, labor, or equipment not within the scope of this general description.

(h) If the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars (\$400), the failure of that contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

If the notice is required to contain the information set forth in paragraph (6) of subdivision (c), a failure to give the notice, including that information, that results in the filing of a lien, claim on a payment bond, or the delivery of a stop notice by the express trust fund to which the obligation is owing constitutes grounds for disciplinary

action by the Registrar of Contractors against the subcontractor if the amount due the trust fund is not paid.

(i) Every city, county, city and county, or other governmental authority issuing building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch, designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the authority.

If there is no known construction lender, that fact shall be noted in the designated space. Any failure to indicate the name and address of the construction lender on the application, however, shall not relieve any person from the obligation to give to the construction lender the notice required by this section.

(j) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for the purpose of constructing improvements on real property, shall bear the designation "Construction Trust Deed" prominently on its face and shall state all of the following: (1) the name and address of the lender, and the name and address of the owner of the real property described in the instrument, and (2) a legal description of the real property that secures the loan and, if known, the street address of the property. The failure to be so designated or to state any of the information required by this subdivision shall not affect the validity of the mortgage, deed of trust, or other instrument.

Failure to provide this information on this instrument when recorded shall not relieve persons required to give preliminary notice under this section from that duty.

The county recorder of the county in which the instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

(k) Every contractor and subcontractor employing laborers as described in subdivision (a) of Section 3089 who has failed to pay those laborers their full compensation when it became due, including any employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder shall, without regard to whether the work was performed on a public or private work, cause to be given to those laborers, their bargaining representatives, if any, and to the construction lender, if any, or to the reputed construction lender, if any, not later than the date the compensation became delinquent, a written notice containing all of the following:

- (1) The name of the owner and the contractor.
- (2) A description of the jobsite sufficient for identification.
- (3) The identity and address of any express trust fund described in Section 3111 to which employer payments are due.
- (4) The total number of straight time and overtime hours on each job.
- (5) The amount then past due and owing.

Failure to give this notice shall constitute grounds for disciplinary action by the Registrar of Contractors.

(l) Every written contract entered into between a property owner and an original contractor shall provide space for the owner to enter his or her name, residence address, and place of business if any. The original contractor shall make available the name and address of residence of the owner to any person seeking to serve the notice specified in subdivision (c).

(m) Every written contract entered into between a property owner and an original contractor, except home improvement contracts and swimming pool contracts subject to Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business and Professions Code, shall provide space for the owner to enter the name and address of the construction lender or lenders. The original contractor shall make available the name and address of the construction lender or lenders to any person seeking to serve the notice specified in subdivision (c). Every contract entered into between an original contractor and subcontractor, and between subcontractors, shall provide a space for the name and address of the owner, original contractor, and any construction lender.

(n) Where one or more construction loans are obtained after commencement of construction, the property owner shall provide the name and address of the construction lender or lenders to each person who has given the property owner the notice specified in subdivision (c).

(o)(1) Each person who has served a preliminary 20-day notice pursuant to subdivision (f) may file the preliminary 20-day notice with the county recorder in the county in which any portion of the property is located. A preliminary 20-day notice filed pursuant to this section shall contain all of the following:

(A) The name and address of the person furnishing the labor, service, equipment, or materials.

(B) The name of the person who contracted for purchase of the labor, services, equipment, or materials.

(C) The common street address of the jobsite.

(2) Upon the acceptance for recording of a notice of completion or notice of cessation the county recorder shall mail to those persons who have filed a preliminary 20-day notice, notification that a notice of completion or notice of cessation has been recorded on the property, and shall affix the date that the notice of completion or notice of cessation was recorded with the county recorder.

(3) The failure of the county recorder to mail the notification to the person who filed a preliminary 20-day notice, or the failure of those persons to receive the notification or to receive complete notification, shall not affect the period within which a claim of lien is required to be recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary 20-day notice under this section and

to do so within five days after the recording of a notice of completion or notice of cessation.

(4) This new function of the county recorder shall not become operative until July 1, 1988. The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing.

(5) The preliminary 20-day notice that a person may file pursuant to this subdivision is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The notice that is filed is not a recordable document and shall not be entered into those official records of the county which by law impart constructive notice. Notwithstanding any other provision of law, the index maintained by the recorder of filed preliminary 20-day notices shall be separate and distinct from those indexes maintained by the county recorder of those official records of the county which by law impart constructive notice. The filing of a preliminary 20-day notice with the county recorder does not give rise to any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary 20-day notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.

(p)(1) The change made to the statement described in subdivision (c) by Chapter 974 of the Statutes of 1994 shall have no effect upon the validity of any notice that otherwise meets the requirements of this section. The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted shall not affect the validity of any preliminary notice provided pursuant to this section.

(2)(A) The inclusion of the language added to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, shall not affect the validity of any preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments to this section enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise meets the requirements of that subdivision.

(B) A preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments to this section enacted at the 2000 portion of the 1999-2000 Regular Session, shall not be invalid because of the failure to include the language added to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, if the notice otherwise complies with that subdivision.

(C) The failure to provide an affidavit form or notice of rights, or both, pursuant to the requirements of Chapter 795 of the Statutes of 1999, shall not affect the validity of any preliminary notice pursuant to this section.

*(Amended by Stats. 1994, Chapter 974 (AB 3357); Stats. 1995, Chapter 225 (AB 901), eff. July 31, 1995; Stats. 1999, Chapter 795 (SB 914); Stats. 2000, Chapter 13 (AB 576), effective April 17, 2000; Stats. 2001, Chapter 159 (SB 662). )*



**EXTRACT FROM THE CONSTITUTION  
OF THE STATE OF CALIFORNIA  
ARTICLE XIV. LABOR RELATIONS**

**Mechanics' Liens**

3. Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

*(Adopted June 8, 1976.)*

NOTE: Persons entitled to claim liens are listed in the California Civil Code, section 3110.

**Contracting with Licensed Professionals for  
Inspection of Consumer Complaints**

7019. (a) If funding is made available for that purpose, the board may contract with licensed professionals, as appropriate, for the site investigation of consumer complaints. The registrar shall determine the rate of reimbursement for licensed professionals performing inspections on behalf of the board. All reports shall be completed on a form prescribed by the registrar.

(b) As used in this section, "licensed professionals" means, but is not limited to, engineers, architects, land-

scape architects, and geologists licensed, certificated, or registered pursuant to this division.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

**Copy of Opinion**

7019.1 Repealed January 1, 2001 by Stats. 1997, Chapter 812 (SB 857).

**Joint Enforcement Actions; Feasibility Study**

7019.5. The board shall contract for a feasibility study relating to the development of a system for joint enforcement actions with respect to contractors by the board, the Department of Industrial Relations, the Employment Development Department, and the Franchise Tax Board. The study should include, but not be limited to, the means of accomplishing the following:

- (a) Establishment of a common identification number which may be utilized by all those agencies.
- (b) Assessment of the current state of technology in the affected departments.
- (c) Assessment of the ability, and any impediments, of the affected departments to share information.
- (d) Comparison of the standards of proof in the issuance of citations and other administrative enforcement actions.
- (e) Ways to consolidate enforcement actions and procedures among the departments.

*(Added by Stats. 1990, Chapter 1386 (AB 2282).)*

**EXTRACT FROM THE UNEMPLOYMENT  
INSURANCE CODE**

**Joint Enforcement Strike Force on the Underground Economy**

329. Joint Enforcement Strike Force on the Underground Economy; agency representatives; chairperson; duties and powers; report

(a) The director, or his or her designee, shall serve as Chairperson of the Joint Enforcement Strike Force on the Underground Economy provided for in Executive Order W-66-93. The strike force shall include, but not be limited to, representatives of the Employment Development Department, the Department of Consumer Affairs, the Department of Industrial Relations, the Department of Insurance, and the Office of Criminal Justice Planning. Other agencies that are not part of the administration, such as the Franchise Tax Board, the State Board of Equalization, and the Department of Justice, are encouraged to participate in the strike force.

(b) The strike force shall have the following duties:

(1) To facilitate and encourage the development and sharing of information by the participating agencies

necessary to combat the underground economy.

(2) To improve the coordination of activities among the participating agencies.

(3) To develop methods to pool, focus, and target the enforcement resources of the participating agencies in order to deter tax evasion and maximize recoveries from blatant tax evaders and violators of cash-pay reporting laws.

(4) To reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.

(c) In addition, the strike force shall be empowered to:

(1) Form joint enforcement teams when appropriate to utilize the collective investigative and enforcement capabilities of the participating members.

(2) Establish committees and rules of procedure to carry out the activities of the strike force.

(3) To solicit the cooperation and participation of district attorneys and other state and local agencies in carrying out the objectives of the strike force.

(4) Establish procedures for soliciting referrals from the public, including, but not limited to, an advertised telephone hotline.

(5) Develop procedures for improved information sharing among the participating agencies, such as shared automated information data base systems, the use of a common business identification number, and a centralized debt collection system.

(6) Develop procedures to permit the participating agencies to use more efficient and effective civil sanctions in lieu of criminal actions wherever possible.

(7) Evaluate, based on its activities, the need for any statutory change to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve the ability of the participating agencies to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(E) Establish sharable information data bases.

(F) Establish a common business identification number for use by participating agencies.

(G) Establish centralized, automated debt collection services for the participating agencies.

(H) Strengthen civil penalty procedures to allow the strike force to emphasize civil rather than criminal penalties wherever possible.

(d) The strike force shall report to the Governor and the Legislature annually during the period of its existence, commencing February 1, 1995, regarding its activities.

The report shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and non-compliance with tax and cash-pay laws identified, audited, investigated, or prosecuted through civil action or referred for criminal prosecution.

(2) Actions taken by the strike force to publicize its activities.

(3) Efforts made by the strike force to establish an advertised telephone hotline for receiving referrals from the public.

(4) Procedures for improving information sharing among the agencies represented on the strike force.

(5) Steps taken by the strike force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any statutory changes needed to accomplish the goals described in paragraph (7) of subdivision (c).

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

*(Added by Stats. 1994, Chapter 1117 (SB 1490), operative until January 1, 2000; Amended by Stats. 1999, Chapter 306 (SB 319); This section is repealed by its own terms on January 1, 2006; Amended by Stats. 2001, Chapter 180 (AB 202).)*

## EXTRACT FROM THE LABOR CODE

### Authority of the Labor Commissioner

106. Joint Enforcement Strike Force on the Underground Economy; employees; citations or penalty assessment orders; appeals

(a) The Labor Commissioner may authorize an employee of any of the agencies that participate in the Joint Enforcement Strike Force on the Underground Economy, as defined in Section 329 of the Unemployment Insurance Code, to issue citations pursuant to Sections 226.4 and 1022 and issue and serve a penalty assessment order pursuant to subdivision (a) of Section 3722.

(b) No employees shall issue citations or penalty assessment orders pursuant to this section unless they have been specifically designated, authorized, and trained by the Labor Commissioner for this purpose. Appeals of all citations or penalty assessment orders shall follow the procedures prescribed in Section 226.5, 1023, or 3725, whichever is applicable.

(c) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

*(Added by Stats. 1994, Chapter 1117 (SB 1490), operative until January 1, 2000; Amended by Stats. 1999, Chapter 306 (SB 319).)*

### Computerized Enforcement Tracking System for Consumer Complaints

7020. The board shall maintain a computerized enforcement tracking system for consumer complaints.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### Studies and Reviews; Reports to Legislature

7021. The board shall conduct the following studies and

reviews, and shall report to the department and the Legislature no later than October 1, 2001.

(a) The board shall conduct a comprehensive study of the issues surrounding home improvement contracts that involve home equity lending fraud and scams, and provide recommendations to deal with this problem.

(b) The board shall conduct a comprehensive study of its reorganization ("reengineering") plan to restructure

intake, mediation, and investigation services, and evaluate the impact this effort has had on consumer and industry access to board staff, its ability to reduce timeframes for complaint processing and investigations, increasing mediations, investigations, and legal actions, productivity of staff, and overall costs to the board.

(c) The board shall conduct a comprehensive study and review of recovery fund programs in California and other states which provide compensation to consumers for financial injury caused by a licensed professional. It should evaluate the effectiveness of these programs and whether such a recovery fund could benefit consumers who are harmed as a result of contractor fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts.

(d) The board shall conduct a comprehensive study in consultation with the Department of Insurance, on the use of surety bonds to compensate homeowners for financial injury sustained as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts. This study shall include consideration of the payout criteria of bonds, increasing the bond amount, a "step-bonding" approach based on the amount of the prime contract, and the requirement of performance or payment bonds. This study shall additionally consider whether to require contractors to carry general liability insurance and whether to establish a guarantee program in order to provide the appropriate insurance and bond coverage in connection with a homeowner's employment of a contractor.

(e) The board shall review its current disclosure policy and provide recommended changes.

*(Added by Stats. 2000, Chapter 1005 (SB 2029).)*

## ARTICLE 2. APPLICATION OF CHAPTER

### "Person" Defined

7025. "Person" as used in this chapter includes an individual, a firm, copartnership, corporation, association or other organization, or any combination of any thereof.

### "Contractor" Defined

7026. "Contractor," for the purposes of this chapter, is synonymous with "builder" and, within the meaning of this chapter, a contractor is any person, who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair,

maintenance, or calibration of monitoring equipment for underground storage tanks, and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. "Contractor" includes subcontractor and specialty contractor. "Roadway" includes, but is not limited to, public or city streets, highways, or any public conveyance.

*(Amended by Stats. 1999, Chapter 708 (AB 1206); Stats. 2001, Chapter 728 (SB 724).)*

### "Contractor" Includes Maintenance and Service

7026.1. The term "Contractor" includes:

(a) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.

(b) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid, to construct any building or home improvement project, or part thereof.

(c) Any person not otherwise exempt by this chapter, who performs tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying. The term contractor does not include a person performing the activities of a nurseryman who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(d) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, re-perforating, or abandoning any water well, cathodic protection well, or monitoring well.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

## EXTRACT FROM THE CALIFORNIA WATER CODE

### License Required for Water Wells

13750.5. No person shall undertake to dig, bore, or drill a water well, cathodic protection well, groundwater monitoring well, or geothermal heat exchange well, to deepen or re-perforate such a well, or to abandon or destroy such a well, unless the person responsible for that construction, alteration, destruction, or abandonment possesses a C-57 Water Well Contractor's License.

*(Amended by Stats. 1996, Chapter 581 (AB 2334).)*

**“Contractor”; Mobilehome**

7026.2. (a) For the purposes of this chapter, “contractor” includes any person engaged in the business of the construction, installation, alteration, repair, or preparation for moving of a mobilehome or mobilehome accessory buildings and structures upon a site for the purpose of occupancy as a dwelling.

(b) “Contractor” does not include the manufacturer of the mobilehome or mobilehome accessory building or structure if it is constructed at a place other than the site upon which it is installed for the purpose of occupancy as a dwelling, and does not include the manufacturer when the manufacturer is solely performing work in compliance with the manufacturer’s warranty. “Contractor” includes the manufacturer if the manufacturer is engaged in onsite construction, alteration, or repair of a mobilehome or mobilehome accessory buildings and structures pursuant to specialized plans, specifications, or models, or any work other than in compliance with the manufacturer’s warranty.

(c) “Contractor” does not include a seller of a manufactured home or mobilehome who holds a retail manufactured home or mobilehome dealer’s license under Chapter 7 (commencing with Section 18045) of Part 2 of Division 13 of the Health and Safety Code, if the installation of the manufactured home or mobilehome is to be performed by a licensed contractor and the seller certifies that fact in writing to the buyer prior to the performance of the installation. The certification shall include the name, business address, and contractor’s license number of the licensed contractor by whom the installation will be performed.

(d) For the purposes of this chapter, the following terms have the following meanings:

(1) “Mobilehome” means a vehicle defined in Section 18008 of the Health and Safety Code.

(2) “Mobilehome accessory building or structure” means a building or structure defined in Section 18008.5 of the Health and Safety Code.

(3) “Manufactured home” means a structure defined in Section 18007 of the Health and Safety Code.

*(Former Section 7026.2 repealed by Stats. 1991, Chapter 1160. Formerly Section 7027 renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

**“Contractor”; Carpet**

7026.3. For the purpose of this chapter, “contractor” includes any person who installs or contracts for the installation of carpet wherein the carpet is attached to the structure by any conventional method as determined by custom and usage in the trade; except that a seller of installed carpet who holds a retail furniture dealer’s license under Chapter 3 (commencing with Section 19000) of Division 8 shall not be required to have a contractor’s license if the installation of the carpet is performed by a licensed contractor and the seller so certifies in writing to the buyer prior to the performance

of the installation, which certification shall include the name, business address, and contractor’s license number of the licensed contractor by whom the installation will be performed.

*(Former Section 7026.3 repealed by Stats. 1991, Chapter 1160. New Section 7026.3 added by Stats. 1991, Chapter 1160 (AB 2190).)*

**Fire Protection Systems; Installations; Fire Protection Contractor Classification**

7026.12. The installation of a fire protection system, excluding an electrical alarm system, shall be performed only by a contractor holding a fire protection contractor classification as defined in the regulations of the board or by an owner-builder of an owner-occupied, single-family dwelling, if not more than two single-family dwellings on the same parcel are constructed within one year, plans are submitted to and approved by the city, county, or city and county authority, and the city, county, or city and county authority inspects and approves the installation.

*(Amended by Stats. 1994, Chapter 185 (AB 2646).)*

**Advertising**

7027. Any person who advertises or puts out any sign or card or other device after the effective date of this section which would indicate to the public that he or she is a contractor, or who causes his or her name or business name to be included in a classified advertisement or directory after the effective date of this section under a classification for construction or work of improvement covered by this chapter is subject to the provisions of this chapter regardless of whether his or her operations as a builder are otherwise exempted.

*(Former Section 7027 renumbered as Section 7026.2 and amended by Stats. 1991, Chapter 1160. Formerly Section 7026.6, renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

**Advertising; Penalty**

7027.1. (a) It is a misdemeanor for any person to advertise for construction or work of improvement covered by this chapter unless that person holds a valid license under this chapter in the classification so advertised, except that a licensed building or engineering contractor may advertise as a general contractor.

(b) “Advertise,” as used in this section, includes, but not by way of limitation, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing for construction or work of improvement covered by this chapter, with or without any limiting qualifications.

(c) A violation of this section is punishable by a fine of not less than seven hundred dollars (\$ 700) and not more than one thousand dollars (\$ 1,000), which fine shall be in addition to any other punishment imposed for a violation of this section.

(d) If upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of

this section, the registrar may issue a citation pursuant to Section 7028.7 or 7099.10.

*(Amended and renumbered by Stats. 1991, Chapter 1160 (AB 2190); amended by Stats. 1994, Chapter 413 (SB 1694); amended by Stats. 1998, Chapter 599 (SB 597).)*

### **Advertisements; Unlicensed Persons**

7027.2. Notwithstanding any other provision of this chapter, any person not licensed pursuant to this chapter may advertise for construction work or work of improvement covered by this chapter, provided that he or she shall state in the advertisement that he or she is not licensed under this chapter.

*(Formerly Section 7026.8, renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### **Incorrect License Number; Penalty for Use**

7027.3. Any person, licensed or unlicensed, who willfully and intentionally uses, with intent to defraud, a contractor's license number that does not correspond to the number on a currently valid contractor's license held by that person, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in state prison, or in county jail for not more than one year, or by both that fine and imprisonment. The penalty provided by this section is cumulative to the penalties available under all other laws of this state. If, upon investigation, the registrar has probable cause to believe that an unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

*(Formerly Section 7026.10, renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190); Amended by Stats. 2001, Chapter 728 (SB 724).)*

### **Landscape Contractor; Design Authority**

7027.5. A landscape contractor working within the classification for which the license is issued may design systems or facilities for work to be performed and supervised by that contractor.

### **Contracting Without License; Second and Subsequent Offenses; Limitation of Actions**

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless such person is particularly exempted from the provisions of this chapter.

(b) If such a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$ 4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

(c) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this section means the aggregate sum of the cost of

materials and labor furnished and the cost of completing the work to be performed.

(d) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

*(Amended by Stats. 1995, Chapter 467 (SB 1061); Amended by Stats. 1996, Chapter 145 (AB 2958).)*

### **Failure to Obtain Required Asbestos Certification; Fines and Penalties**

7028.1. It is a misdemeanor for any contractor to perform or engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this code, or to perform or engage in a removal or remedial action, as defined in subdivision (d) of Section 7058.7, or, unless otherwise exempted by this chapter, to bid for the installation or removal of, or to install or remove, an underground storage tank, without certification pursuant to Section 7058.7. A contractor in violation of this section is subject to one of the following penalties:

(a) Conviction of a first offense is punishable by a fine of not less than one thousand dollars (\$ 1,000) or more than three thousand dollars (\$ 3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense requires a fine of not less than three thousand dollars (\$ 3,000) or more than five thousand dollars (\$ 5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment, and a mandatory action to suspend or revoke any contractor's license.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190); amended by Stats. 1993, Chapter 589 (AB 2211); Amended by Stats. 1996, Chapter 712 (SB 1557).)*

### **Criminal Complaints; Payment of Penalties**

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

*(Amended by Stats. 1989, Chapter 366; amended by Stats. 1998, Chapter 931 (SB 2139), eff. September 28, 1998.)*

### **Injunction Proceedings**

7028.3. In addition to all other remedies, when it appears to the registrar, either upon complaint or otherwise, that a licensee has engaged in, or is engaging in, any act, practice, or transaction which constitutes a violation of this chapter whereby another person may be substantially injured, or that any person, who does not hold a state contractor's license in any classification, has engaged in,

or is engaging in, any act, practice, or transaction which constitutes a violation of this chapter, whether or not there is substantial injury, the registrar may, either through the Attorney General or through the district attorney of the county in which the act, practice, or transaction is alleged to have been committed, apply to the superior court of that county or any other county in which such person maintains a place of business or resides, for an injunction restraining such person from acting in the capacity of a contractor without a license in violation of this chapter, or from acting in violation of this chapter when another person may be substantially injured, and, upon a proper showing, a temporary restraining order, a preliminary injunction, or a permanent injunction shall be granted.

### **Injunction Against Nonlicensee**

7028.4. In addition to the remedies set forth in Section 7028.3, on proper showing by (1) a licensed contractor, or an association of contractors, (2) a consumer affected by the violation, (3) a district attorney, or (4) the Attorney General, of a continuing violation of this chapter by a person who does not hold a state contractor's license in any classification, an injunction shall issue by a court specified in Section 7028.3 at the request of any such party, prohibiting such violation. The plaintiff in any such action shall not be required to prove irreparable injury.

### **Individual Licenses**

7028.5. It is unlawful for any person who is or has been a member, officer, director or responsible managing officer of a licensed copartnership, corporation, firm, association or other organization to individually engage in the business or individually act in the capacity of a contractor within this State without having a license in good standing to so engage or act.

### **Citations Containing Orders of Abatement and Civil Penalties; Nonlicensure**

7028.6. The Registrar of Contractors is hereby empowered to issue citations containing orders of abatement and civil penalties against persons acting in the capacity of or engaging in the business of a contractor within this state without having a license in good standing to so act or engage or a failure to maintain the notice required in Section 7048.

*(Amended by Stats. 1998, Chapter 633 (SB 2217).)*

### **Citation for Nonlicensure; Order of Abatement; Civil Penalty; Procedures; Regulations**

7028.7. If upon inspection or investigation, either upon complaint or otherwise, the registrar has probable cause to believe that a person is acting in the capacity of or engaging in the business of a contractor or salesperson within this state without having a license or registration in good standing to so act or engage, and the person is not otherwise exempted from this chapter, the registrar shall issue a citation to that person. Within 72 hours of receiving notice that a public entity is intending to award, or has awarded, a contract to an unlicensed contractor, the

registrar shall give written notice to the public entity that a citation may be issued if a contract is awarded to an unlicensed contractor. If after receiving the written notice from the registrar that the public entity has awarded or awards the contract to an unlicensed contractor the registrar may issue a citation to the responsible officer or employee of the public entity as specified in Section 7028.15. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars (\$200) nor more than fifteen thousand dollars (\$15,000). With the approval of the Contractors State License Board the registrar shall prescribe procedures for the issuance of a citation under this section. The Contractors' State License Board shall adopt regulations covering the assessment of a civil penalty which shall give due consideration to the gravity of the violation, and any history of previous violations. The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil or criminal.

*(Amended by Stats. 1991, Chapter 785 (AB 800); Stats. 1992, Chapter 606 (AB 3240); Stats. 2001 Chapter 728 (SB 724).)*

### **Service of Citation**

7028.8. Service of a citation issued under Section 7028.7 may be made by certified mail at the last known business address or residence address of the person cited.

### **Time for Issuance of Citation**

7028.9. A citation under Section 7028.7 shall be issued by the registrar within four years after the act or omission that is the basis for the citation.

*(Amended by Stats. 1996, Chapter 145 (AB 2958).)*

### **Appeal of Citation**

7028.10. Any person served with a citation under Section 7028.7 may appeal to the registrar within 15 working days after service of the citation with respect to violations alleged, scope of the order of abatement, or amount of civil penalty assessed.

### **Finality of Citation; Time Period for Notice of Intent to Appeal**

7028.11. If within 15 working days after service of the citation, the person cited fails to notify the registrar that he or she intends to appeal the citation, the citation shall be deemed a final order of the registrar and not subject to review by any court or agency. The 15-day period may be extended by the registrar for good cause.

### **Hearing on Citation; Issuance of Decision; Procedure**

7028.12. If the person cited under Section 7028.7 timely notifies the registrar that he or she intends to contest the citation, the registrar shall afford an opportunity for a hearing. The registrar shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief.

The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

### **Judgment for Amount of Civil Penalty; Order for Compliance with Order of Abatement; Application**

7028.13. (a) After the exhaustion of the review procedures provided for in Sections 7028.10 to 7028.12, inclusive, the registrar may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the order of abatement. The application, which shall include a certified copy of the final order of the registrar, shall constitute a sufficient showing to warrant the issuance of the judgment and order. If the cited person did not appeal the citation, a certified copy of the citation and proof of service, and a certification that the person cited is not or was not a licensed contractor or applicant for a license at the time of issuance of the citation, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(b) Notwithstanding any other provision of law, the registrar may delegate the collection of the civil penalty for any citation issued to any person or entity legally authorized to engage in collections. Costs of collection shall be borne by the person cited. The registrar shall not delegate the authority to enforce the order of abatement.

(c) Notwithstanding any other provision of law the registrar shall have the authority to assign the rights to the civil penalty, or a portion thereof, for adequate consideration. The assignee and the registrar shall have all the rights afforded under the ordinary laws of assignment of rights and delegation of duties. The registrar shall not assign the order of abatement. The assignee may apply to the appropriate superior court for a judgment based upon the assigned rights upon the same evidentiary showing as set forth in subdivision (a).

(d) Notwithstanding any other provision of law, including subdivisions (1) and (2) of Section 340 of the Code of Civil Procedure, the registrar or his or her designee or assignee shall have four years from the date of the final order to collect civil penalties except that the registrar or his or her designee or assignee shall have 10 years from the date of the judgment to enforce civil penalties on citations that have been converted to judgments through the process described in subdivisions (a) and (c).

*(Amended by Stats. 2001, Chapter 728 (SB 724).)*

### **Waiver of Part of Civil Penalty**

7028.14. Notwithstanding any other provision of the law, the registrar may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a contractor's license. Any outstanding injury to the public shall be satisfactorily settled prior to issuance of the license.

*(Added by Stats. 1989, Chapter 1174.)*

### **Submission of Bid to Public Agency without a License: Misdemeanor**

7028.15. (a) It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefor, except in any of the following cases:

(1) The person is particularly exempted from this chapter.

(2) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code or on any local agency project governed by Section 20103.5 of the Public Contract Code.

(b) If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(c) This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licensure.

(d) This section shall not affect the right or ability of a licensed architect, land surveyor, or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.

(e) Unless one of the foregoing exceptions applies, a bid submitted to a public agency by a contractor who is not licensed in accordance with this chapter shall be considered nonresponsive and shall be rejected by the public agency. Unless one of the foregoing exceptions applies, a local public agency shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. Notwithstanding any other provision of law, unless one of the foregoing exceptions applies, the registrar may issue a citation to any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to a contractor who is not licensed pursuant to this chapter. The amount of civil penalties, appeal, and finality of such citations shall be subject to Sections 7028.7 to 7028.13, inclusive. Any contract awarded to, or any purchase order issued to, a contractor who is not licensed pursuant to this chapter is void.

(f) Any compliance or noncompliance with subdivision (e) of this section, as added by Chapter 863 of the Statutes of 1989, shall not invalidate any contract or bid awarded

by a public agency during which time that subdivision was in effect.

(g) A public employee or officer shall not be subject to a citation pursuant to this section if the public employee, officer, or employing agency made an inquiry to the board for the purposes of verifying the license status of any

person or contractor and the board failed to respond to the inquiry within three business days. For purposes of this section, a telephone response by the board shall be deemed sufficient.

*(Amended by Stats. 1991, Chapter 785 (AB 800); amended by Stats. 1992, Chapter 294 (AB 2347).)*

## EXTRACT FROM THE PUBLIC CONTRACT CODE

### License Required for Award of Contract on State Projects

10164. In all state projects where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in

accordance with the laws of this state. The contract shall not be awarded unless the state agency has verified that the contractor has a valid license in the appropriate classification for the work performed. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License Board. The department shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract as provided in Section 10181 and shall result in the forfeiture of the security of the bidder.

*(Amended by Stats. 1994, Chapter 432 (AB 3365).)*

### Payment to Subcontractors

10262. The contractor shall pay to his or her subcontractors, within 10 days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by his or her subcontractors, to the extent of each subcontractor's interest therein. The payments to subcontractors shall be based on estimates made pursuant to Section 10261. Any diversion by the contractor of payments received for prosecution of a contract, or failure to reasonably account for the applica-

tion or use of the payments constitutes ground for actions proscribed in Section 10253, in addition to disciplinary action by the Contractors' State License Board. The subcontractor shall notify, in writing, the Contractors' State License Board and the department of any payment less than the amount or percentage approved for the class or item of work as set forth in Section 10261.

*(Amended by Stats. 1998, Chapter 857 (AB 2084).)*

### Public Works Contracts; Bidder or Contractor Not Licensed; Penalties

20103.5. In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

*(Added by Stats. 1990, Chapter 321 (SB 929) as Section 20104, eff. July 16, 1990. Renumbered as Section 20103.5 by Stats. 1990, Chapter 1414 (AB 4165).)*

### State of Emergency; Acting as Contractor Without License; Penalty

7028.16. Any person who engages in the business or act in the capacity of a contractor, without having a license therefor, in connection with the offer or performance of repairs to a residential or nonresidential structure for damage caused by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an

emergency or major disaster is declared by the President of the United States, shall be punished by a fine up to ten thousand dollars (\$10,000), or by imprisonment in the state prison for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment..

*(Added by Stats. 1989-90. 1st Ex. Sess., Chapter 36.)*



**EXTRACT FROM THE PENAL CODE****State of Emergency; Fraud of Owners or Lessees of Residential Structures; Penalties**

670. (a) Any person who violates Section 7158 or 7159 of, or subdivision (b), (c), (d), or (e) of Section 7161 of, the Business and Professions Code or Section 470, 484, 487, or 532 of this code as part of a plan or scheme to defraud an owner or lessee of a residential or nonresidential structure in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster specified in subdivision (b), shall be subject to the penalties and enhancements specified in subdivisions (c) and (d). The existence of any fact which would bring a person under this section shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plead of guilty or nolo contendere or by trial by the court sitting without a jury.

(b) This section applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(c) The maximum or prescribed amounts of fines for offenses subject to this section shall be doubled. If the person has been previously convicted of a felony offense specified in subdivision (a), the person shall receive a one-year enhancement in addition to, and to run consecutively to, the term of imprisonment for any felony otherwise prescribed by this subdivision.

(d) Additionally, the court shall order any person sentenced pursuant to this section to make full restitution to the victim or to make restitution to the victim based on the person's ability to pay, as defined in subdivision (b) of Section 1203.1b. The payment of the restitution ordered by the court pursuant to this subdivision shall be made a condition of any probation granted by the court for an offense punishable under this section. Notwithstanding any other provision of law, the period of probation shall be at least five years or until full restitution is made to the victim, whichever first occurs.

(e) Notwithstanding any other provision of law, the prosecuting agency shall be entitled to recover its costs of investigation and prosecution from any fines imposed for a conviction under this section.

*(Added by Stats. 1989-90, 1st Ex. Sess., Chapter 36 (AB 9), eff. Sept. 24, 1990; Amended by Stats. 2001, Chapter 854 (SB 205).)*

**Enhanced Sentence for Fraud in Repairing Natural Disaster Damage**

667.16 (a) Any person convicted of a felony violation of Section 470, 487, or 532 as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home,

in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall receive a one-year enhancement in addition and consecutive to the penalty prescribed. The additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(b) This enhancement applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(c) Notwithstanding any other law, the court may strike the additional term provided in subdivision (a) if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

*(Added by Stats. 1994, Chapter 175 (SB 634), urgency, eff. July 9, 1994.)*

**Insurance Fraud**

551. (a) It is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to an automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder's automobile physical damage or automobile collision coverage, or to a contractor or its employees or agents for repairs to or replacement of a structure covered by a residential or commercial insurance policy.

(b) Except in cases in which the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs to or replacement of a motor vehicle or residential or commercial structure. This subdivision does not prohibit an advertisement for repair or replacement services at a discount as long as the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.

(c) A violation of this section is a public offense. Where the amount at issue exceeds four hundred dollars (\$400), the offense is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one

thousand dollars (\$1,000), or by both that imprisonment and fine. In all other cases, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) Every person who, having been convicted of subdivision (a) or (b), or Section 7027.3 or former Section 9884.75 of the Business and Professions Code and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of subdivision (a) or (b), upon a subsequent conviction of one of those offenses, shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, by a fine of not more than ten thousand dollars (\$10,000), or by both that

imprisonment and fine; or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(e) For purposes of this section:

(1) "Automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(2) "Contractor" has the same meaning as set forth in Section 7026 of the Business and Professions Code.

*(Added by Stats. 1992 Chapter 675 (AB 3067); Amended by Stats. 1993, Chapter 462 (AB 438), effective September 25, 1993; Amended by Stats. 1995, Chapter 373 (SB 639).)*

### **Unlicensed Contractor; Penalty for Failure to Comply with Citation**

7028.17. (a) The failure of an unlicensed individual to comply with a citation after it is final is a misdemeanor.

(b) Notwithstanding Section 1462.5 or 1463 of the Penal Code or any other provision of law, any fine collected upon conviction in a criminal action brought under this section shall be distributed as follows:

(1) If the action is brought by a district attorney, any fine collected shall be paid to the treasurer of the county in which the judgment was entered to be designated for use by the district attorney.

(2) If the action is brought by a city attorney or city prosecutor, any fine collected shall be paid to the treasurer of the city in which the judgment was entered, to be designated for use by the city attorney.

*(Formerly Section 7099.85, renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### **Joint Venture License Defined; Suspension**

7029. A joint venture license is a license issued to any combination of individuals, corporations, partnerships, or other joint ventures, each of which holds a current, active license in good standing. A joint venture license may be issued in any classification in which at least one of the entities is licensed. An active joint venture license shall be automatically suspended by operation of law during any period in which any member of the entity does not hold a current, active license in good standing.

### **Contracting Jointly Without Joint License; Effect**

7029.1. It is unlawful for any two or more licensees, each of whom has been issued a license to act separately in the capacity of a contractor within this state, to be awarded a

contract jointly or otherwise act as a contractor without first having secured a joint venture license in accordance with the provisions of this chapter as provided for an individual, partnership or corporation. Any violation of this section shall also constitute a cause for disciplinary action. If a combination of licensees submit a bid for the performance of work for which a joint venture license is required, a failure to obtain that license shall not prevent the imposition of any penalty specified by law for the failure of a contractor who submits a bid to enter into a contract pursuant to the bid.

### **Plumbing, Electrical Sign and Well-Drilling Contractors; Identification on Vehicle**

7029.5. Every plumbing contractor, electrical sign contractor, and well-drilling contractor licensed under this chapter shall have displayed on each side of each motor vehicle used in his or her business, for which a commercial vehicle registration fee has been paid pursuant to Article 3 (commencing with Section 9400) of Chapter 6 of Division 3 of the Vehicle Code, his or her name, permanent business address, and contractor's license number, all in letters and numerals not less than 1 1/2 inches high.

The identification requirements of this section shall also apply to any drill rig used for the drilling of water wells.

Failure to comply with this section constitutes a cause for disciplinary action.

*(Former Section 7029.5 repealed by Stats. 1991, Chapter 1160. Formerly Section 7029.6, renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### **Statement Required on Contracts**

7030. (a) Every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

“Contractors are required by law to be licensed and regulated by the Contractors’ State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors’ State License Board, P.O. Box 26000, Sacramento, California 95826.”

(b) At the time of making a bid or prior to entering into a contract to perform work on residential property with four or fewer units, whichever occurs first, a contractor shall

provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

“STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS’ STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS \$ 500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS’ STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS’ STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE INFORMATION.”

(c) Failure to comply with the notice requirements set forth in subdivision (a) or (b) of this section is cause for disciplinary action.

*(Amended by Stats. 1994, Chapter 783 (AB 3001); Amended by Stats. 1995, Chapter 467 (SB 1061); Repealed and added by Stats. 1996, Chapter 282 (AB 2494); amended by Stats. 1998, Chapter 633 (SB 2217).)*

### Disclosure

7030.1 (a) A contractor, who has his or her license suspended or revoked two or more times within an eight-year period, shall disclose either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, in a document provided prior to entering into a contract to perform work on residential property with four or fewer units, any disciplinary license suspension, or license revocation during the last eight years resulting from any violation of this chapter by the contractor, whether or not the suspension or revocation was stayed.

(b) The disclosure notice required by this section may be provided in a bid, estimate, or other document prior to entering into a contract.

(c) A violation of this section is subject to the following penalties:

(1) A penalty of one thousand dollars (\$ 1,000) shall be assessed for the first violation.

(2) A penalty of two thousand five hundred dollars (\$ 2,500) shall be assessed for the second violation.

(3) A penalty of five thousand dollars (\$ 5,000) shall be assessed for a third violation in addition to a one-year suspension of license by operation of law.

(4) A fourth violation shall result in the revocation of license in accordance with this chapter.

*(Added by Stats. 1996, Chapter 282 (AB 2494).)*

### License Number Required on All Contracts, etc.

7030.5. Every person licensed pursuant to this chapter shall include his license number in: (a) all construction contracts; (b) subcontracts and calls for bid; and (c) all forms of advertising, as prescribed by the registrar of contractors, used by such a person.

### Proof of Licensure; Compensation Prohibited

7031. (a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

(b) A person who utilizes the services of an unlicensed

contractor may bring an action in any court of competent jurisdiction in the state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.

(c) A security interest taken to secure any payment for the performance of any act or contract for which a license is required by this chapter is unenforceable if the person performing the act or contract was not a duly licensed contractor at all times during the performance of the act or contract.

(d) If licensure or proper licensure is controverted, then proof of licensure pursuant to this section shall be made by production of a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action. Nothing herein shall require any person or entity controverting licensure or proper licensure to produce a verified certificate. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure shall be on the licensee.

(e) The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) did not know or reasonably should not have known that he or she was not duly licensed. Subdivision (b) of Section 143 does not apply to contractors subject to this subdivision.

(f) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (d) shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom, except that the amendments to subdivisions (d) and (e) enacted during the 1994 portion of the 1993--94 Regular Session of the Legislature shall not apply to either of the following:

(1) Any legal action or arbitration commenced prior to January 1, 1995, regardless of the date on which the parties entered into the contract.

(2) Any legal action or arbitration commenced on or after January 1, 1995, if the legal action or arbitration was commenced prior to January 1, 1995, and was subsequently dismissed.

*(Amended by Stats. 1991, Chapter 632 (AB 1382); amended by Stats. 1992, Chapter 229 (AB 2413); amended by Stats. 1993, Chapter 797*

*(AB 628); amended by Stats. 1994, Chapter 550 (SB 1844); amended by Stats. 2001, Chapter 226 (AB 678).)*

### **License Required for Construction Permit**

7031.5. Each county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition or repair of any building or structure shall also require that each applicant for such a permit file as a condition precedent to the issuance of a permit a statement which he has prepared and signed stating that the applicant is licensed under the provisions of this chapter, giving the number of the license and stating that it is in full force and effect, or, if the applicant is exempt from the provisions of this chapter, the basis for the alleged exemption.

Any violation of this section by any applicant for a permit shall be subject to a civil penalty of not more than five hundred dollars (\$500).

### **City or County Permits**

7032. Nothing in this chapter shall limit the power of a city or county to regulate the quality and character of installations made by contractors through a system of permits and inspections which are designed to secure compliance with and aid in the enforcement of applicable state and local building laws, or to enforce other local laws necessary for the protection of the public health and safety. Nothing in this chapter shall limit the power of a city or county to adopt any system of permits requiring submission to and approval by the city or county of plans and specifications for an installation prior to the commencement of construction of the installation.

Cities or counties may direct complaints to the registrar against licensees based upon determinations by city or county enforcement officers of violations by such licensees of codes the enforcement of which is the responsibility of the complaining city or county. Such complaints shall to the extent determined to be necessary by the registrar be given priority in processing over other complaints. Nothing contained in this section shall be construed as authorizing a city or county to enact regulations relating to the qualifications necessary to engage in the business of contracting.

### **City or County Business Licenses**

7033. Every city or city and county which requires the issuance of a business license as a condition precedent to engaging, within the city or city and county, in a business which is subject to regulation under this chapter, shall require that each licensee and each applicant for issuance or renewal of such license shall file, or have on file, with such city or city and county, a signed statement that such licensee or applicant is licensed under the provisions of this chapter and stating that the license is in full force and effect, or, if such licensee or applicant is exempt from the provisions of this chapter, he shall furnish proof of the facts which entitle him to such exemption.

**EXTRACT FROM THE GOVERNMENT CODE****Licensing for Revenue by Cities**

37101.7. (a) In accordance with the provisions of subdivision (b), the legislative body may license for revenue, and fix the license tax upon, persons who transact in the city the business of a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(b) The ordinance which adopts the license and license tax shall not impose a greater license tax upon those persons subject to it who, as contractors, have no fixed place of business within the city, than upon those contractors who have a fixed place of business within the city; provided, however, that such ordinance may impose a license tax graduated according to gross receipts attributable to contracting work done within a city, regardless of whether or not the contractor has a fixed place of business within the city.

**Prohibited Clauses; Waiver of Lien Rights**

7034. (a) No contractor who is required to be licensed under this chapter shall insert in any contract, or be a party, with a subcontractor who is licensed under this chapter to any contract which contains, a provision, clause, covenant, or agreement which is void or unen-

forceable under Section 2782 of the Civil Code.

(b) No contractor who is required to be licensed under this chapter shall require a waiver of lien rights from any subcontractor, employee, or supplier in violation of Section 3262 of the Civil Code.

**EXTRACTS FROM THE CIVIL CODE****Construction Contracts; Invalidity of Provisions to Indemnify Promisee Against Liability; Exceptions; Contracts with Public Agencies; Invalidity of Provisions to Relieve Public Agency from Liability for Active Negligence**

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and which purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to such promisee, or for defects in design furnished by such persons, are against public policy and are void and unenforceable; provided, however, that this provision shall not affect the validity of any insurance contract, workers' compensation or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency which purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency shall be void and unenforceable.

(Amended by Stats. 1990, Chapter 814 (SB 1922).)

**Exception for Professional Engineer or Geologist; "Hazardous Materials" Defined**

2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to indemnify a professional engineer or geologist or the agents, servants, independent contractors, subsidiaries, or employees of that engineer or geologist from liability as described in Section 2782 in providing hazardous materials identification, evaluation, preliminary assessment, design, remediation services, or other services of the types described in Sections 25322 and 25323 of the Health and Safety Code or the federal National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are satisfied:

(1) The services in whole or in part address subterranean contamination or other concealed conditions caused by the hazardous materials. (2) The promisor is responsible, or potentially responsible, for all or part of the contamination.

(b) The indemnification described in this section is valid only for damages arising from, or related to, subterranean contamination or concealed conditions, and is not applicable to the first two hundred fifty thousand dollars (\$250,000) of liability or such greater amount as is agreed by the parties.

(c) This section does not authorize contracts for indemnification, by promisors specified in paragraph (2) of subdivision (a), of any liability of a promisee arising from the gross negligence or willful misconduct of the promisee.

(d) "Hazardous materials," as used in this section, means any hazardous or toxic substance, material, or waste which is or becomes subject to regulation as such by any agency of the state, any municipality or political subdivision of the state, or the United States.

“Hazardous materials” includes, but is not limited to, any material or substance that is any of the following:

- (1) A hazardous substance, as defined in Section 25316 of the Health and Safety Code.
- (2) Hazardous material, as defined in subdivision (j) of Section 25501 of the Health and Safety Code.
- (3) Acutely hazardous material, as defined in subdivision (a) of Section 25532 of the Health and Safety Code.
- (4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.
- (5) Extremely hazardous waste, as defined in Section 25115 of the Health and Safety Code.
- (6) Petroleum.
- (7) Asbestos.
- (8) Designated as a hazardous substance for purposes of Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).

(9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6903).

(10) A hazardous substance, as defined by subsection (14) of Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601).

(11) A regulated substance, as defined by subsection (2) of Section 9001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

(e) Nothing in this section shall be construed to alter, modify, or otherwise affect the liability of the promisor or promisee, under an indemnity agreement meeting the criteria of this section, to third parties for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense.

(f) This section does not apply to public entities, as defined by Section 811.2 of the Government Code.

*(Added by Stats. 1990, Chapter 814 (SB 1922).)*

### ARTICLE 3. EXEMPTIONS

#### Public Personnel

7040. (a) This chapter does not apply to an authorized representative of the United States government, the State of California, or any incorporated town, city, county, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state when

the entity or its representative is acting within the scope of the entity's or representative's official capacity.

(b) Nothing in this section authorizes the entity or its authorized representative thereof either to enter into or authorize a contract with an unlicensed contractor for work which is required by this chapter to be performed by a licensed contractor.

*(Amended by Stats. 1995, Chapter 467 (SB 1061).)*

### EXTRACT FROM THE PUBLIC CONTRACT CODE

#### License Required for Award of Contract

6100. (a) Any state agency or department, as defined in Section 10357, which is subject to this code, shall, prior to awarding a contract for work to be performed by a contractor, as defined by Section 7026 of the Business and Professions Code, verify with the Contractors' State License Board that the person seeking the contract is licensed in a classification appropriate to the work to be undertaken. Verification as required by this section need

only be made once every two years with respect to the same contractor.

(b) In lieu of the verification, the state entity may require the person seeking the contract to present his or her pocket license or certificate of licensure and provide a signed statement which swears, under penalty of perjury, that the pocket license or certificate of licensure presented is his or hers, is current and valid, and is in a classification appropriate to the work to be undertaken.

#### Court Officers

7041. This chapter does not apply to officers of a court when they are acting within the scope of their office.

#### Public Utilities

7042. This chapter does not apply to public utilities operating under the regulation of the State Railroad Commission on construction, maintenance and development work incidental to their own business.

#### Gas, Heat or Electrical Corporations Regulated as Public Utilities, Conditions for Exemption from Licensure

7042.1. (a) Notwithstanding any other provisions of this chapter, gas heat, or electrical corporations and their subsidiaries that are regulated as public utilities by the Public Utilities Commission shall not conduct work for which a contractor's license is required, except under any one or more of the following conditions:

- (1) The work is performed upon the gas, heat, or electrical corporation's properties.
- (2) The work is performed through a contract with a contractor or contractors licensed pursuant to this chapter or the work is performed for low-income citizens pursuant to a program authorized by order of the Public Utilities Commission.
- (3) The work is undertaken by the gas, heat, or electrical corporation in furtherance of the generation, transmission, or distribution of electricity, gas, or steam, whether within or without the service area of the corporation, if any work performed within a structure and beyond a customer's utility meter is necessary to protect the public safety or to avoid interruption of service.
- (4) The work is otherwise exempt from the provisions of this chapter.
- (5) The work is performed to comply with programs or procedures ordered or authorized by the Public Utilities Commission not inconsistent with the objectives ex-

pressed in Chapter 984 of the Statutes of 1983.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Gas, heat, or electrical corporation properties" means properties which a gas, heat, or electrical corporation owns or leases, or over which it has been granted an easement for utility purposes, or facilities which a gas, heat, or electrical corporation owns or operates for utility purposes.

(2) "Subsidiaries" means subsidiaries of a gas, heat, or electrical corporation regulated as public utilities by the Public Utilities Commission which carry out activities solely for utility purposes.

(c) It is the intention of the Legislature in enacting this section that public utility regulations be clearly based on the principle that the energy conservation industry should be allowed to develop in a competitive manner, as declared in Chapter 984 of the Statutes of 1983.

*(Amended by Stats. 1989, Chapter 29.)*

## EXTRACT FROM THE LABOR CODE

### Electrician Competency and Training Standards

3099. The Division of Apprenticeship Standards shall do all of the following:

- (a) On or before July 1, 2001, establish and validate minimum standards for the competency and training of electricians through a system of testing and certification.
- (b) On or before March 1, 2000, establish an advisory committee and panels as necessary to carry out the functions under this section. There shall be contractor representation from both joint apprenticeship programs and unilateral nonunion programs in the electrical contracting industry.
- (c) On or before July 1, 2001, establish fees necessary to implement this section.
- (d) On or before July 1, 2001, establish and adopt regulations to enforce this section.

(e) There shall be no discrimination for or against any person based on membership or nonmembership in a union.

As used in this section, "electricians" include all employees who engage in the connection of electrical devices for electrical contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically, contractors classified as electrical contractors in the Contractors' State License Board Rules and Regulations. This section does not apply to electrical connections under 100 volt-amperes. This section does not apply to persons performing work to which Section 7042.1 of the Business and Professions Code is applicable, or to electrical work ordinarily and customarily performed by stationary engineers.

*(Added by Stats. 1999, Chapter 781 (AB 931); Amended by Stats. 2000, Chapter 875 (AB 2481))*

### Public Utilities Operating Under Regulation of Public Utilities Commission on Construction, Maintenance, and Development Work Incidental to Own Business; Activities of Cable Television Corporation Subject to Regulation Under Sec. 768.5; Duration of Section

7042.5. This chapter does not apply to public utilities operating under the regulation of the Public Utilities Commission on construction, maintenance, and development work incidental to their own business, or to those activities of a cable television corporation subject to regulation pursuant to Section 768.5 of the Public Utilities Code, except underground trenching by a cable television corporation within the public streets, other than that

necessary solely for the connection of its distribution system to, or within the properties of, subscribers or potential subscribers.

As used in this section, a cable television corporation is a corporation or person that transmits television programs by cable to subscribers for a fee.

### Oil and Gas Operations

7043. This chapter does not apply to any construction, repair or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning or other operation of any petroleum or gas well, when performed by an owner or lessee.

**Owner Doing Own Work or Having Employees With Wages as Sole Compensation; Owner Having Licensed Contractors; Improvement of Residence by Homeowner; Presumptions; Injunctions; Discipline; Violations of Sec. 7028**

7044. This chapter does not apply to any of the following:

(a) An owner of property, building or improving structures thereon, or appurtenances thereto, who does the work himself or herself or through his or her own employees with wages as their sole compensation, provided none of the structures, with or without the appurtenances thereto, are intended or offered for sale.

(b) An owner of property, building or improving structures thereon, or appurtenances thereto, who contracts for such a project with a subcontractor or subcontractors licensed pursuant to this chapter.

However, this exemption shall apply to the construction of single-family residential structures only if four or fewer of these structures are intended or offered for sale in a calendar year. This limitation shall not apply if the owner of property contracts with a general contractor for the construction.

(c) A homeowner improving his or her principal place of residence or appurtenances thereto, provided that all of the following conditions exist:

- (1) The work is performed prior to sale.
- (2) The homeowner has actually resided in the residence for the 12 months prior to completion of the work.
- (3) The homeowner has not availed himself or herself of the exemption in this subdivision on more than two structures more than once during any three-year period.

In all actions brought under this chapter, proof of the sale or offering for sale of any such structure by the owner-builder within one year after completion of same constitutes a rebuttable presumption affecting the burden of proof that such structure was undertaken for purposes of sale. Except as otherwise provided in this section, proof of the sale or offering for sale of five or more structures by the owner-builder within one year after completion constitutes a conclusive presumption that the structures were undertaken for purposes of sale.

In addition to all other remedies, any (1) licensed contractor, or association of contractors, (2) labor organization, (3) consumer affected by the violation, (4) district attorney, or (5) the Attorney General, shall be entitled to seek injunctive relief prohibiting any violation of this chapter by an owner-builder who is neither licensed nor exempted from licensure by this section or any other section according to the provisions specified in Section 7028.3 or Section 7028.4. The plaintiff in any such action shall not be required to prove irreparable injury and shall be entitled to attorneys' fees and all costs incurred in the prosecution of such action, provided the plaintiff is the prevailing party. The defendant in any such action, shall be entitled to attorneys' fees and all costs incurred in the defense against such action, provided the defendant is the prevailing party.

The registrar pursuant to Section 7090 may take disciplinary action as provided in this chapter against any person whenever the grounds or cause for disciplinary action arose upon any project undertaken by him or her as a licensee licensed pursuant to this chapter.

Any person, firm, or corporation which has violated Section 7028 by engaging in contracting work as an owner-builder without having a license or an exemption from licensure under this section or any other section shall not be entitled to become a licensee under this chapter for a period of one year following the violation.

*(Amended by Stats. 1988, Chapter 1035.)*

**Real Estate Licensee Acting Within Scope of License**

7044.1. This chapter does not apply to a real estate licensee acting within the course and scope of his or her license pursuant to the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4). However, nothing in this section shall authorize a real estate licensee or a property manager to act in the capacity of a contractor unless licensed by the board.

*(Added by Stats. 1994, Chapter 361 (AB 2636).)*

**Inapplicability of Chapter**

7044.2. This chapter does not apply to an admitted surety insurer whenever that surety insurer engages a contractor to undertake the completion of a contract on which a performance or completion bond was issued by the surety insurer, provided all actual construction work is performed by duly licensed contractors.

*(Added by Stats. 1996, Chapter 287 (SB 2002); amended by Stats. 1997, Chapter 17 (SB 947).)*

**Finished Products**

7045. This chapter does not apply to the sale or installation of any finished products, materials, or articles of merchandise that do not become a fixed part of the structure, nor shall it apply to a material supplier or manufacturer furnishing finished products, materials, or articles of merchandise who does not install or contract for the installation of those items. The term "finished products" shall not include installed carpets or mobilehomes or mobilehome accessory structures, as defined in Section 7026.2.

This chapter shall apply to the installation of home improvement goods, as defined in Section 7151.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190); amended by Stats. 1993, Chapter 589 (AB 2211).)*

**Personal Property**

7046. This chapter does not apply to any construction, alteration, improvement, or repair of personal property. The term "personal property" shall not include mobilehomes or mobilehome accessory structures as defined in Section 7026.2.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*



### Small Operations

7048. (a) This chapter does not apply to any work or operation on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items, is less than five hundred dollars (\$500), that work or operations being considered of casual, minor, or inconsequential nature.

This exemption does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than five hundred dollars (\$500) for the purpose of evasion of this chapter or otherwise.

This exemption does not apply to a person who advertises

or puts out any sign or card or other device which might indicate to the public that he or she is a contractor or that he or she is qualified to engage in the business of a contractor.

(b) Any person performing work costing less than five hundred dollars (\$500) who is not licensed under this chapter shall disclose to the purchaser of the work the fact that he or she is not licensed by the Contractors' State License Board.

At the time of making a bid or prior to entering into a contract to perform work for less than five hundred dollars (\$500), whichever occurs first, the person performing the work shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:

**"I, (individual's name), AM NOT LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD.**

**STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS \$ 500 OR MORE (INCLUDING LABOR AND MATERIALS).**

**LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES."**

The person performing the work shall maintain for four years a copy of the above notice signed by the purchaser of the work acknowledging receipt of this notice.

The exemption provided by this section does not apply to any person failing to provide the required notice to the purchaser of the work.

This notice need only be provided once to the same purchaser of subsequent work.

*(Amended by Stats. 1998, Chapter 633 (SB 2217).)*

### Irrigation and Reclamation Districts Exempt; Farming Exempt; Water Wells Not Exempt

7049. This chapter does not apply to any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising, or clearing or other work upon the land in rural districts for fire prevention purposes, except when performed by a licensee under this chapter.

The provisions of this chapter do apply to the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, reperforming, or abandoning water wells.

### Architect, Engineer, Pest Control

7051. This chapter does not apply to a licensed architect or a registered civil or professional engineer acting solely in his or her professional capacity or to a licensed structural pest control operator acting within the scope of his or her

license or a licensee operating within the scope of the Geologist and Geophysicist Act.

*(Amended by Stats. 1994, Chapter 26 (AB 1807), urgency, eff. March 30, 1994.)*

### Suppliers of Materials

7052. This chapter does not apply to any person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.

### Employees

7053. Except as provided in Article 10 (commencing with Section 7150), this chapter does not apply to any person who engages in the activities herein regulated as an employee who receives wages as his or her sole compensation, does not customarily engage in an independently established business, and does not have the right to control or discretion as to the manner of performance so as to determine the final results of the work performed.

### Alarm Company Operators; Application of Licensing Provisions

7054. This chapter does not apply to any person who performs work in the installation, maintenance, monitoring, selling, alteration, or servicing of alarm systems, as defined in subdivision (n) of Section 7590.1, and who holds an alarm company operator's license issued pursuant to Chapter 11.6 (commencing with Section 7590).

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

## EXTRACT FROM THE BUSINESS AND PROFESSIONS CODE

### Definitions

7590.1. The following terms as used in this chapter have the meaning expressed in this article:

- (a) "Person" means any individual, firm, company, association, organization, partnership, limited liability company, or corporation.
- (b) "Department" means the Department of Consumer Affairs.
- (c) "Director" means the Director of Consumer Affairs.
- (d) "Bureau" means the Bureau of Security and Investigative Services.
- (e) "Chief" means the Chief of the Bureau of Security and Investigative Services.
- (f) "Employer" means a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, and withholds all legally required deductions and contributions.
- (g) "Employee" means an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's direction and control.
- (h) "Employer-employee relationship" means an individual who works for another and where the individual's name appears on the payroll records of the employer.
- (i) "Licensee" means a business entity, whether an individual, partnership, or corporation licensed under this chapter.
- (j) "Qualified manager" means an individual who is in active control, management, and direction of the licensee's business, and who is in possession of a current and valid qualified manager's certificate pursuant to this chapter.
- (k) "Registrant" means any person registered or who has applied for registration under this chapter.
- (l) "Branch office" means any location, other than the principal place of business of the licensee, which is licensed as set forth in Article 11 (commencing with Section 7599.20).
- (m) "Branch office manager" means an individual designated by the qualified manager to manage the licensee's branch office and who has met the requirements as set forth in Article 11 (commencing with Section 7599.20).
- (n) "Alarm system" means an assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention and to which police are expected to respond.
- (o) "Alarm agent" means a person employed by an alarm company operator whose duties include selling on

premises, altering, installing, maintaining, moving, repairing, replacing, servicing, responding, or monitoring an alarm system, or a person who manages or supervises a person employed by an alarm company to perform any of the duties described in this subdivision or any person in training for any of the duties described in this subdivision.

(p) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slingshot, billy, sandclub, sandbag, metal knuckles; any dirk, dagger, pistol, revolver, or any other firearm; any knife having a blade longer than five inches; any razor with an unguarded blade; or any metal pipe or bar used or intended to be used as a club.

(q) "Firearms permit" means a permit issued by the bureau, pursuant to Article 6 (commencing with Section 7596), to a licensee, a qualified manager, or an alarm agent, to carry an exposed firearm while on duty.

(r) (1) "Advertisement" means:

(A) Any written or printed communication for the purpose of soliciting, describing, or promoting the licensed business of the licensee, including a brochure, letter, pamphlet, newspaper, periodical, publication, or other writing.

(B) A directory listing caused or permitted by the licensee which indicates his or her licensed activity.

(C) A radio, television, or similar airwave transmission which solicits or promotes the licensed business of the licensee.

(2) "Advertisement" does not include any of the following:

(A) Any printing or writing used on buildings, vehicles, uniforms, badges, or other property where the purpose of the printing or writing is identification.

(B) Any printing or writing on communications, memoranda, or any other writings used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of business.

(C) Any printing or writing on novelty objects used in the promotion of the licensee's business where the printing of the information required by this chapter would be impractical due to the available area or surface.

(s) "Residential sales agreement" means and includes an agreement between an alarm company operator and an owner or tenant for the purchase of an alarm system to be utilized in the personal residence of the owner or tenant.

(t) "Firearm permit" means and includes "firearms permit," "firearms qualification card," "firearms qualification," and "firearms qualification permit."

*(Amended by Stats. 1993, Chapter 1263 (AB 936); amended by Stats. 1994, Chapter 1010 (SB 2053).)*

## Electronic and Appliance Repair Dealers Installing Satellite Antennas; Application of Licensing Provisions

7054.5. The licensing provisions of this chapter do not apply to any person registered under Chapter 20 (commencing with Section 9800) if that person's activities consist only of installing satellite antenna systems on residential structures or property.

### EXTRACT FROM BUSINESS AND PROFESSIONS CODE

#### LICENSED CONTRACTOR'S EXEMPTION FROM THE PROVISIONS OF THE ARCHITECTS ACT

##### Exemptions

5537. (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

- (1) Single-family dwellings of woodframe construction not more than two stories and basement in height.
  - (2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.
  - (3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.
  - (4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.
- (b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for woodframe construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by, or under the responsible control of, a licensed architect or registered engineer. The documents for that portion shall bear the stamp and signature of the licensee who is responsible for their preparation. Substantial compliance for purposes of this section is not intended to restrict the ability of the building officials to approve plans pursuant to existing law and is only intended to clarify the intent of Chapter 405 of the Statutes of 1985.

*(Amended by Stats. 1990, Chapter 94 (AB 1005); Amended by Stats. 1996, Chapter 184 (SB 1607).)*

##### Exemptions; Contractors

5537.2. This chapter shall not be construed as authorizing a licensed contractor to perform design services beyond those

described in Section 5537 or in Chapter 9 (commencing with Section 7000), unless those services are performed by or under the direct supervision of a person licensed to practice architecture under this chapter, or a professional or civil engineer licensed pursuant to Chapter 7 (commencing with Section 6700) of Division 3, insofar as the professional or civil engineer practices the profession for which he or she is registered under that chapter.

However, this section does not prohibit a licensed contractor from performing any of the services permitted by Chapter 9 (commencing with Section 7000) of Division 3 within the classification for which the license is issued. Those services may include the preparation of shop and field drawings for work which he or she has contracted or offered to perform, and designing systems and facilities which are necessary to the completion of contracting services which he or she has contracted or offered to perform.

However, a licensed contractor may not use the title "architect," unless he or she holds a license as required in this chapter.

#### LICENSED CONTRACTOR'S EXEMPTION FROM THE PROVISIONS OF THE ENGINEERS ACT

##### Exemption of Contractors

6737.3. A contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3, is exempt from the provisions of this chapter relating to the practice of electrical or mechanical engineering so long as the services he or she holds himself or herself out as able to perform or does perform, which services are subject to the provisions of this chapter, are performed by, or under the responsible supervision of a registered electrical or mechanical engineer insofar as the electrical or mechanical engineer practices the branch of engineering for which he or she is registered.

This section shall not prohibit a licensed contractor, while engaged in the business of contracting for the installation of electrical or mechanical systems or facilities, from designing those systems or facilities in accordance with applicable construction codes and standards for work to be performed and supervised by that contractor within the classification for which his or her license is issued, or from preparing electrical or mechanical shop or field drawings for work which he or she has contracted to perform. Nothing in this section is intended to imply that a licensed contractor may design work which is to be installed by another person.

*(Amended by Stats. 1994, Chapter 26 (AB 1807), urgency, eff. March 30, 1994.)*

## ARTICLE 4. CLASSIFICATIONS

### Classification

7055. For the purpose of classification, the contracting business includes any or all of the following branches:

- (a) General engineering contracting.
- (b) General building contracting.
- (c) Specialty contracting.

### General Engineering Contractor

7056. A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works.

### General Building Contractor

7057. (a) Except as provided in this section, a general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

This does not include anyone who merely furnishes materials or supplies under Section 7045 without fabricating them into, or consuming them in the performance of the work of the general building contractor.

(b) A general building contractor may take a prime contract or a subcontract for a framing or carpentry project. However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate specialty license or subcontracts with an appropriately licensed specialty contractor to perform the work. A general building contractor shall not take a subcontract involving trades

other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the required specialty license. The general building contractor may not count framing or carpentry in calculating the two unrelated trades necessary in order for the general building contractor to be able to take a prime contract or subcontract for a project involving other trades.

(c) No general building contractor shall contract for any project that includes the "C-16" Fire Protection classification as provided for in Section 7026.12 or the "C-57" Well Drilling classification as provided for in Section 13750.5 of the Water Code, unless the general building contractor holds the specialty license, or subcontracts with the appropriately licensed specialty contractor.

*(Amended by Stats. 1997, Chapter 812 (SB 857).)*

### Specialty Contractor

7058. (a) A specialty contractor is a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

(b) A specialty contractor includes a contractor whose operations include the business of servicing or testing fire extinguishing systems.

(c) A specialty contractor includes a contractor whose operations are concerned with the installation and laying of carpets, linoleum, and resilient floor covering.

(d) A specialty contractor includes a contractor whose operations are concerned with preparing or removing roadway construction zones, lane closures, flagging, or traffic diversions on roadways, including, but not limited to, public streets, highways, or any public conveyance.

On and after January 1, 2001, no person or entity shall set up or remove roadway construction zones, lane closures, flagging, or traffic diversions on any roadway unless that person or entity holds the appropriate specialty license pursuant to this chapter.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190); Stats. 1999, Chapter 708 (AB 1206).)*

### Testing for Specialty Licenses; Exemptions

7058.1. (a) An individual or entity covered under subdivision (d) of Section 7058 is exempt from testing for a specialty license with regard to those operations if, by no later than March 31, 2000, the individual or entity provides documentation and certification under penalty of perjury that all of the following apply:

(1) The individual or entity has been continuously engaged in the business of traffic control for at least the prior 10 years.

(2) The individual or entity has not been a party to a construction litigation judgment totaling more than five

hundred thousand dollars (\$500,000) or 5 percent of the annual value of work performed, whichever is less.

(3) The individual or entity has not had any conviction for a serious or willful violation of the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code).

(4) The individual or entity has not been convicted of a violation of federal or state law, including, but not limited to, a violation of provisions governing the payment of wages, benefits, or personal income tax withholding, or provisions governing Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding requirements, or unemployment insurance payment requirements, during the last five years. For the purposes of the paragraph, only a conviction as an employer shall be deemed applicable, unless it is shown that the individual or entity, in the capacity of an employer, failed to comply with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code.

(5) The individual or entity has not been convicted of submitting a false or fraudulent claim to a public agency during the last five years.

(b) Any employer who is found to have falsified his or her application for exemption from testing with respect to any information required to be provided under this section may not reapply for that exemption or apply for the required specialty license for a period of two years.

(c) Until the Contractors' State Licensing Board adopts an examination for the classification specified in subdivision (d) of Section 7058, any individual or entity that does not qualify for an exemption from testing under subdivision (a) and is performing work defined under subdivision (d) of Section 7058 shall be required to apply for a license in order to continue performing that work until an examination is available, at which time, that individual or entity shall be subject to the examination requirement.

*(Added by Stats.1999, Chapter 708 (AB 1206).)*

### **Asbestos Certification Examination**

7058.5. (a) No contractor shall engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, which involves 100 square feet or more of surface area of asbestos containing materials, unless the qualifier for the license passes an asbestos certification examination. Additional updated asbestos certification examinations may be required based on new health and safety information. The decision on whether to require an updated certification examination shall be made by the Contractors' State License Board, in consultation with the Division of Occupational Safety and Health in the Department of Industrial Relations and the State Department of Health Services.

No asbestos certification examination shall be required for contractors involved with the installation, maintenance, and repair of asbestos cement pipe or sheets, vinyl asbestos floor materials, or asbestos bituminous or resinous materials.

"Asbestos" as used in this section, has the same meaning as defined in Section 6501.7 of the Labor Code.

(b) The Contractors' State License Board shall develop, and deliver to all applicants with the request for bond and fee, a booklet containing information relative to handling and disposal of asbestos, together with an open book examination concerning asbestos-related work. All applicants for an initial contractor's license and all applicants filing a delinquent renewal application who have not previously completed the open book examination shall complete and sign the open book examination and submit it to the Contractors' State License Board with the required renewal or bond and fee.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### **Asbestos Certification; Registration with Division of Occupational Safety and Health Required**

7058.6. (a) The board shall not issue an asbestos certification, as required by Section 7058.5, unless the contractor is registered with the Division of Occupational Safety and Health of the Department of Industrial Relations pursuant to Section 6501.5 of the Labor Code. The board may issue an asbestos certification to a contractor who is not registered, provided the contractor in a written statement acknowledges that he or she does not perform asbestos-related work. The board shall notify both the division and the contractor, in writing, of the contractor's passage of the certification examination, for the purpose of allowing the contractor to satisfy the requirement of paragraph (1) of subdivision (a) of Section 6501.5 of the Labor Code. The contractor shall register with the division within 90 days from the date the contractor is notified of the passage of the certification examination. The board may require a reexamination if the contractor fails to register within 90 days following issuance of the notification. Applicable test fees shall be paid for any reexamination required under this section.

(b) Any contractor who is certified to engage in asbestos-related work shall present proof of current registration with the division pursuant to Section 6501.5 of the Labor Code upon application for renewal of his or her license, if the contractor engages in asbestos-related work, as defined in Section 6501.8 of the Labor Code.

(c) A contractor who is not certified pursuant to this section may bid on and contract to perform a project involving asbestos-related work as long as the asbestos-related work is performed by a contractor who is certified and registered pursuant to this section and Section 6501.5 of the Labor Code.

(d) The board shall obtain and periodically update the list of contractors certified to engage in asbestos-related work who are registered pursuant to Section 6501.5 of the Labor Code.

*(Amended by Stats. 1995, Chapter 467 (SB 1061).)*

## EXTRACT FROM THE LABOR CODE

### Asbestos Certification

6501.5. Effective January 1, 1987, any employer or contractor who engages in asbestos-related work, as defined in Section 6501.8, and which involves 100 square feet or more of surface area of asbestos-containing material, shall register with the division.

The division may grant registration based on a determination that the employer has demonstrated evidence that the conditions, practices, means, methods, operations, or processes used, or proposed to be used, will provide a safe and healthful place of employment. This section is not intended to supersede existing laws and regulations under Title 8, California Administrative Code, Section 5208.

An application for registration shall contain such information and attachments, given under penalty of perjury, as the division may deem necessary to evaluate the safety and health of the proposed employment or place of employment. It shall include, but not be limited to, all of the following:

(a) Every employer shall meet each of the following criteria:

(1) If the employer is a contractor, the contractor shall be certified pursuant to Section 7058.5 of the Business and Professions Code.

(2) Provide health insurance coverage to cover the entire cost of medical examinations and monitoring required by law and be insured for workers' compensation, or provide a five hundred dollar (\$500) trust account for each employee engaged in asbestos-related work. The health insurance coverage may be provided through a union, association, or employer.

(3) Train and certify all employees in accordance with all training required by law and Title 8 of the California Administrative Code.

(4) Be proficient and have the necessary equipment to safely do asbestos-related work.

(b) Provide written notice to the division of each separate job or phase of work, where the work process used is different or the work is performed at noncontiguous locations, noting all of the following:

(1) The address of the job.

(2) The exact physical location of the job at that address.

(3) The start and projected completion date.

(4) The name of a certified supervisor with sufficient experience and authority who shall be responsible for the asbestos-related work at that job.

(5) The name of a qualified person, who shall be responsible for scheduling any air sampling, laboratory calibra-

tion of air sampling equipment, evaluation of sampling results, and conducting respirator fit testing and evaluating the results of those tests.

(6) The type of work to be performed, the work practices that will be utilized, and the potential for exposure.

Should any change be necessary, the employer or contractor shall so inform the division at or before the time of the change. Any oral notification shall be confirmed in writing.

(c) Post the location where any asbestos-related work occurs so as to be readable at 20 feet stating, "Danger—Asbestos. Cancer and Lung Hazard. Keep Out."

(d) A copy of the registration shall be provided before the start of the job to the prime contractor or other employers on the site and shall be posted on the jobsite beside the Cal-OSHA poster.

(e) The division shall obtain the services of three industrial hygienists and one clerical employee to implement and to enforce the requirements of this section unless the director makes a finding that these services are not necessary or that the services are not obtainable due to a lack of qualified hygienists applying for available positions. Funding may, at the director's discretion, be appropriated from the Asbestos Abatement Fund.

(f) Not later than January 1, 1987, the Division of Occupational Safety and Health shall propose to the Occupational Safety and Health Standards Board for review and adoption a regulation concerning asbestos-related work, as defined in Section 6501.8, which involves 100 square feet or more of surface area of asbestos-containing material.

The regulation shall protect most effectively the health and safety of employees and shall include specific requirements for certification of employees, supervisors with sufficient experience and authority to be responsible for asbestos-related work, and a qualified person who shall be responsible for scheduling any air sampling, for arranging for calibration of the air sampling equipment and for analysis of the air samples by a NIOSH approved method, for conducting respirator fit testing, and for evaluating the results of the air sampling.

The Division of Occupational Safety and Health shall also propose a regulation to the Occupational Safety and Health Standards Board for review and adoption specifying sampling methodology for use in taking air samples.

### Asbestos, Definition

6501.7. "Asbestos" means fibrous forms of various hydrated minerals, including chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite—grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.

### **Asbestos-Related Work; Asbestos Containing Construction Material**

6501.8. (a) For purposes of this chapter, “asbestos-related work” means any activity which by disturbing asbestos-containing construction materials may release asbestos fibers into the air and which is not related to its manufacture, the mining or excavation of asbestos-bearing ore or materials, or the installation or repair of automotive materials containing asbestos.

(b) For purposes of this chapter, “asbestos containing construction material” means any manufactured construction material that contains more than one-tenth of 1 percent asbestos by weight.

(c) For purposes of this chapter, “asbestos-related work” does not include the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe used outside of buildings, if the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe does not result in asbestos exposures to employees in excess of the action level determined in accordance with sections 1529 and 5208 of Title 8 of the California Code of Regulations, and if the employees and supervisors involved in the operation have received training through a task-specific training program, approved pursuant to section 9021.9, with written certification of completion of that training by the training entity responsible for the training.

*(Amended by Stats. 1993, Chapter 1075 (SB 877).)*

### **Determine Presence of Asbestos Before Commencing Work**

6501.9. The owner of a commercial or industrial building or structure, employer, or contractor who engages in, or contracts for, asbestos-related work shall make a good faith effort to determine if asbestos is present before the work is begun. The contractor or employer shall first inquire of the owner if asbestos is present in any building or structure built prior to 1978.

*(Amended by Stats. 1986, Chapter 1451, eff. September 30, 1986.)*

## **EXTRACTS FROM THE HEALTH AND SAFETY CODE CHAPTER 10.35**

### **Asbestos and Hazardous Substance Removal Contracts Intent**

25914. The Legislature hereby finds and declares that it is the public policy of the state to ensure that work performed on behalf of the public or private entity or person be done properly to safeguard the public health and safety when removing asbestos and hazardous substances.

### **Definitions**

25914.1. For purposes of this chapter, the following definitions shall apply:

(a) “Asbestos” has the same meaning as defined in Section 6501.7 of the Labor Code.

(b) “Asbestos-related work,” is defined in Chapter 6 (commencing with Section 6500) of Part 1 of Division 5 of the Labor Code, including Section 6501.8 of the Labor Code, and involves 100-square feet or more of surface area of asbestos containing material and is such that it requires that the contractor who performs the work must be certified in accordance with subdivision (a) of Section 7058.5 of the Business and Professions Code.

(c) “Hazardous substance removal” has the same meaning as used in Section 7058.7 of the Business and Professions Code.

### **Need for Separate Contract; Emergency Conditions**

25914.2. (a) All asbestos-related work and hazardous substance removal shall be performed pursuant to a contract separate from any other work to be performed, when the presence of asbestos or hazardous substances is not disclosed in the bid or contract documents.

(b) All asbestos-related and hazardous substance removal work which is disclosed in the bid or contract documents shall not require a separate contract from any other work to be performed.

(c) In the event the contractor encounters on the site materials he or she reasonably believes to be asbestos or a hazardous substance, and the asbestos or hazardous substance has not been rendered harmless, the contractor may continue work in unaffected areas reasonably believed safe, and shall immediately cease work on the area affected and report the condition to the owner, or the owner’s representative, or architect in writing.

(d) With regard to a public entity, if an emergency condition arises, as defined in Section 10122 or 22035 of the Public Contract Code, then all asbestos-related and hazardous substance removal shall be contracted and performed pursuant to Section 10122 or 22035 of the Public Contract Code, respectively. Contractors performing the work shall have all registration and certificates required pursuant to the Labor Code and the Business and Professions Code.

### **Certification Requirement; Bids**

25914.3. Notwithstanding any other provision of law, a contractor who is not certified pursuant to Section 7058.6 of the Business and Professions Code may bid on a project involving asbestos related work so long as the asbestos related work is performed by a contractor who is registered pursuant to Section 6501.5 of the Labor Code and certified pursuant to Section 7058.6 of the Business and Professions Code.

*(Added by Stats. 1991, Chapter 789 (AB 1639).)*

### Hazardous Substance Removal Certification Examination; Advisory Committee

7058.7. (a) No contractor shall engage in a removal or remedial action, as defined in subdivision (d), unless the qualifier for the license has passed an approved hazardous substance certification examination.

(b) (1) The Contractors' State License Board, the Division of Occupational Safety and Health of the Department of Industrial Relations, and the Department of Toxic Substances Control shall jointly select an advisory committee, which shall be composed of two representatives of hazardous substance removal workers in California, two general engineering contractors in California, and two representatives of insurance companies in California who shall be selected by the Insurance Commissioner.

(2) The Contractors' State License Board shall develop a written test for the certification of contractors engaged in hazardous substance removal or remedial action, in consultation with the Division of Occupational Safety and Health, the State Water Resources Control Board, the Department of Toxic Substances Control, and the advisory committee.

(c) The Contractors' State License Board may require additional updated approved hazardous substance certification examinations of licensees currently certified based on new public or occupational health and safety information. The Contractors' State License Board, in consultation with the Department of Toxic Substances Control and the State Water Resources Control Board, shall approve other initial and updated hazardous substance certification examinations and determine whether

to require an updated certification examination of all current certificate holders.

(d) For purposes of this section "removal or remedial action" has the same meaning as found in Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, if the action requires the contractor to dig into the surface of the earth and remove the dug material and the action is at a site listed pursuant to Section 25356 of the Health and Safety Code or any other site listed as a hazardous waste site by the Department of Toxic Substances Control or a site listed on the National Priorities List compiled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.). "Removal or remedial action" does not include asbestos-related work, as defined in Section 6501.8 of the Labor Code, or work related to a hazardous substance spill on a highway.

(e) (1) A contractor shall not install or remove an underground storage tank, unless the contractor has passed the hazardous substance certification examination developed pursuant to this section.

(2) A contractor who is not certified may bid on or contract for the installation or removal of an underground tank, as long as the work is performed by a contractor who is certified pursuant to this section.

(3) For purposes of this subdivision, "underground storage tank" has the same meaning as defined in subdivision (x) of Section 25281 of the Health and Safety Code.

*(Amended by Stats. 1990, Chapter 1366 (SB 2004), eff. Sept. 26, 1990; amended by Stats. 1992, Chapter 1289 (AB 2743), Chapter 1290 (AB 3188), eff. Sept. 30, 1992; amended by Stats. 1993, Chapter 168 (AB 427).)*

### EXTRACT FROM THE HEALTH AND SAFETY CODE

#### Definitions

25281. For purposes of this chapter, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, which alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism which alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and which detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program

specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency which has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, the UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404. The UPAs also have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement



and enforce the regulations adopted to implement the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant thereto.

(d) "Department" means the Department of Toxic Substances Control.

(e) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(f) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(g) "Hazardous substance" means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(h) "Local agency" means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(i) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(j) "Owner" means the owner of an underground storage tank.

(k) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(l) "Pipe" means any pipeline or system of pipelines

which is used in connection with the storage of hazardous substances and which is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(m) "Primary containment" means the first level of containment, such as the portion of a tank which comes into immediate contact on its inner surface with the hazardous substance being contained.

(n) "Product tight" means impervious to the substance which is contained, or is to be contained, so as to prevent the seepage of the substance from the primary containment. To be product tight, the tank shall not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank.

(o) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(p) "Secondary containment" means the level of containment external to, and separate from, the primary containment.

(q) "Single walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(r) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(s) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not mean the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(t) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials (e.g. wood, concrete, steel, plastic) which provides structural support.

(u) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(v) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

(w) "Unauthorized release" means any release of any hazardous substance which does not conform to this chapter, including, but not limited to, an unauthorized

release specified in Section 25295.5, unless this release is authorized by the board or a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(x)(1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank which is located on a farm or at the residence of a person, which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under Section 25291 or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop

mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(y) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(z)(1) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land which are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

4(2) "Unified program facility permit" means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and which encompasses the permitting requirements of Section 25284.

4(3) "Permit" means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

*(Amended by Stats. 1991, Chapter 1138 (AB 1954); Stats. 1992, Chapter 654 (AB 3089), eff. September 12, 1992; Stats. 1993, Chapter 432 (AB 1061), eff. September 22, 1993; Stats. 1994, Chapter 1200 (SB 469), urgency, eff. September 30, 1994; Stats. 1995, Chapter 639 (SB 1191); Stats. 1999, Chapter 328 (SB 665).)*

### Asbestos Information; Availability to Public

7058.8. The board shall make available to the public upon request information about contracting for the removal or encapsulation of asbestos-containing materials in a building including all of the following:

(a) Steps to take when contracting with a company to remove asbestos.

(b) Existing laws and regulations pertaining to asbestos-related work in California.

(c) Basic health information as contained in the United States Environmental Protection Agency publication, "Guidance for Controlling Asbestos-Containing Materials in Buildings."

(d) A current list of contractors who are certified pursuant to Section 7058.5 to engage in asbestos-related work and who are registered pursuant to Section 6501.5 of the Labor Code.

This section shall become operative on July 1, 1989.

*(Added by Stats. 1988, Chapter 1003, eff. July 1, 1989.)*

### Powers to Classify and Limit Operations of a Licensed Contractor; Incidental Work; Specialty Contractors on Public Works Contracts

7059. (a) The board may adopt reasonably necessary rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed

contractor to those in which he or she is classified and qualified to engage, as defined by Sections 7055, 7056, 7057, and 7058. A licensee may make application for classification and be classified in more than one classification if the licensee meets the qualifications prescribed by the board for such additional classification or classifications. The application shall be in a form as prescribed by the registrar and shall be accompanied by the application fee fixed by this chapter. No license fee shall be charged for an additional classification or classifications.

Nothing contained in this section shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he or she is licensed, is incidental and supplemental to the performance of the work in the craft for which the specialty contractor is licensed.

(b) In public works contracts, as defined in Section 1101 of the Public Contract Code, the awarding authority shall determine the license classification necessary to bid and perform the project. In no case shall the awarding authority award a prime contract to a specialty contractor whose classification constitutes less than a majority of the project. When a specialty contractor is authorized to bid a project, all work to be performed outside of his or her license specialty, except work authorized by subdivision (a), shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code).

### **Business Name; Compatibility with Classification; One Name per License**

7059.1. (a) A licensee shall not use any business name that indicates the licensee is qualified to perform work in classifications other than those issued for that license, or any business name that is incompatible with the type of business entity licensed.

(b) A licensee shall not conduct business under more than one name for each license. Nothing in this section shall prevent a licensee from obtaining a business name change as otherwise provided by this chapter.

(Amended by Stats. 2001, Chapter 728, (SB 724).)

## **ARTICLE 5. LICENSING**

### **Investigation, Classification and Qualification of Applicants By Examination; Waiver of Examination**

7065. Under rules and regulations adopted by the board and approved by the director, the registrar shall investigate, classify, and qualify applicants for contractors' licenses by written examination. This examination shall include questions designed to show that the applicant has the

necessary degree of knowledge required by Section 7068 and shall include pertinent questions relating to the laws of this state, and the contracting business and trade. Contractors' licenses are to be issued to individual owners, copartnerships, and corporations. An individual owner may qualify by examination for a contractor's license upon the appearance of the owner or a qualifying individual appearing as a responsible managing employee on behalf of the owner. A copartnership may qualify by examination for a contractor's license upon the appearance of a copartner or a qualifying individual appearing as a responsible managing employee. A corporation may qualify by examination for a contractor's license upon the appearance of a qualifying individual appearing either as a responsible managing officer or a responsible managing employee. No examination shall be required of a qualifying individual if, within the five-year period immediately preceding the application for licensure, the qualifying individual has either personally passed the written examination for the same classification being applied for, or has served as the qualifying individual for a licensee whose license was in good standing at any time during the five-year period immediately preceding the application for licensure and in the same classification being applied for.

## **EXTRACT FROM THE GOVERNMENT CODE**

### **Discrimination by "Licensing Board"**

12944. Licensing boards; unlawful acts based on examinations and qualifications; determination of unlawfulness; inquiries; reasonable accommodations; records

(a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, physical disability, mental disability, age, or sexual orientation, unless the practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an

application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

(Amended by Stats. 1992, Chapter 912 (AB 1286), Chapter 913 (AB 1077); Stats. 1999, Chapter 592 (AB 1001).)

### Development of Asbestos Certification Examination

7065.01. On or before May 15, 1986, the Contractors' State License Board shall develop a written test for the certification of contractors engaged in asbestos-related work. The test shall be developed according to professionally accepted psychometric principles for licensing examinations, and with the assistance of subject matter experts provided by the Division of Occupational Safety and Health, the State Department of Health Services, and subject matter experts selected from the insurance industry, registered professional engineers, asbestos workers in California, and from licensed contractors engaged in asbestos-related work.

### Examination Preparation

7065.05. (a) The board shall periodically review and, if needed, revise the contents of qualifying examinations to insure that the examination questions are timely and relevant to the business of contracting. The board shall, in addition, construct and conduct examinations in such a manner as to preclude the possibility of any applicant having prior knowledge of any specific examination question.

(b) The board shall establish a priority list and schedule for the completion of an occupational analysis of its current examinations. The board shall complete this analysis with respect to those examinations having the highest and moderately high need for revision by July 1, 2001, and complete this analysis with respect to all remaining examinations for revision by July 1, 2002.

*(Amended by Stats. 2000, Chapter 1005 (SB 2029))*

### Investigation, Classification and Qualification of Applicants By Examination; Waiver of Examination

7065.1. Notwithstanding Section 7065, the registrar may waive the examination for a contractor's license under any of the following circumstances:

(a) The qualifying individual has, for five of the seven years immediately preceding the application for licensure, been listed on the official records of the board as a member of the personnel of any licensee who held a license, which was active and in good standing, in the same classification being applied for, and who during the period listed on the license has been actively engaged in a licensee's construction activities in the same classification within which the applicant applies for a license.

(b) The qualifying individual is an immediate member of the family of a licensee whose individual license was active and in good standing for five of the seven years immediately preceding the application for licensure, and the qualifying individual is able to show all of the following:

- (1) The qualifying individual has been actively engaged in the licensee's business for five of the seven years immediately preceding the application for licensure.
- (2) The license is required to continue the existing family business in the event of the absence or death of the licensee.
- (3) An application is made for a new license in the same

classifications in which the licensee is or was licensed.

(c) The qualifying individual is an employee of a corporation seeking to replace its former qualifying individual and has been employed by that corporation under the following conditions:

(1) For five of the seven years immediately preceding the application for licensure, the qualifying individual has been continually employed by the corporation in a supervisory capacity in the same classifications being applied for.

(2) For five of the seven years immediately preceding the application for licensure, the corporation has held an active license in good standing in the same classifications being applied for.

The corporation has not requested a waiver under this subdivision within the past five years.

For purposes of this section, employees of a corporation shall include, but not be limited to, the officers of a corporation.

*(Amended by Stats. 1990, Chapter 1456 (SB 2476); amended by Stats. 1992, Chapter 746 (AB 2424).)*

### Waiver of Examination

7065.2. Notwithstanding Section 7065, the registrar may waive the examination for a contractor's license if the applicant has previously held a valid contractor's license in this state and has been acting in the capacity of a contractor for the United States government in a position exempt from licensure under this chapter.

### Experienced Licensees; Adding Additional Classifications Without Further Examinations; Field Investigation

7065.3. Notwithstanding Section 7065, upon a conclusive showing by a licensee that he or she possesses experience satisfactory to the registrar in the classification applied for, an additional classification may be added, without further examination, under all of the following conditions:

(a) For five of the seven years immediately preceding the application, the qualifying individual of the licensee has been listed as a member of the personnel of any licensee whose license was active and in good standing, and who during the period listed on a license was actively engaged in the licensee's construction activities.

(b) The qualifying individual for the applicant has had within the last 10 years immediately preceding the filing of the application, not less than four years experience as a journeyman, foreman, supervising employee or contractor in the classification within which the licensee intends to engage in the additional classification as a contractor.

(c) The application is, as determined by the registrar, for a classification which is closely related to the classification or classifications in which the licensee is licensed, or the qualifying individual is associated with a licensed general engineering contractor or licensed general building contractor and is applying for a classification which is a

significant component of the licensed contractor's construction business as determined by the registrar. This section shall not apply to an applicant who is licensed solely within the limited-specialty classifications. Pursuant to Section 7065, the registrar shall conduct a comprehensive field investigation of no less than 3 percent of applications filed under this section to ensure that the applicants met the experience requirements of this section and shall make public, at quarterly meetings of the Contractors State License Board, a listing of all applications approved under this section during the previous 12 months, including, but not limited to, the name of the applicant, license number, classification applied for, and existing classifications.

*(Added by Stats. 1990, Chapter 1456 (SB 2476).)*

### **Reciprocity for Contractors Licensed in Other State; Waiver of Trade Examination**

7065.4. The registrar may accept the qualifications of an applicant who is licensed as a contractor in a similar classification in another state if that state accepts the qualifications of a contractor licensed in this state for purposes of licensure in that other state, and if the board ascertains, on a case-by-case basis, that the professional qualifications and conditions of good standing for licensure and continued licensure are at least the same or greater in that state as in California. The registrar may waive the trade examination for that applicant if the applicant provides written certification from that other state in which he or she is licensed, that the applicant's license has been in good standing for the previous five years.

*(Added by Stats. 1990, Chapter 1326 (AB 3480), eff. Sept. 25, 1990.)*

### **Minor; Guardian Required**

7065.5. No license shall be issued to a minor, nor to any copartnership a member of which is a minor, nor to any corporation any officer, director or responsible managing employee of which is a minor, nor to any other kind of business organization in which a minor holds a responsible official position, unless such minor shall first have had a guardian appointed by a court of competent jurisdiction.

### **Application for an Original License**

7066. To obtain an original license, an applicant shall submit to the registrar an application in writing containing the statement that the applicant desires the issuance of a license under the terms of this chapter.

The application shall be made on a form prescribed by the registrar in accordance with the rules and regulations adopted by the board and shall be accompanied by the fee fixed by this chapter.

### **Acquisition and Printing of Blank Forms**

7066.5. Any person may obtain blank license application, renewal, or reinstatement forms from the Department of Consumer Affairs, or may cause to be printed forms used by or approved by the Registrar of Contractors.

### **Financial Solvency**

7067.5. Every applicant for an original license, or for the reactivation of an inactive license, or for the reissuance or reinstatement of a revoked license shall possess and every such applicant, other than one applying under Section 7029 unless required by the registrar, shall evidence financial solvency. The registrar shall deny the application of any applicant who fails to comply with this section. For purposes of this section financial solvency shall mean that the applicant's operating capital shall exceed two thousand five hundred dollars (\$2500).

The applicant shall provide answers to questions contained in a standard form of questionnaire as required by the registrar relative to his financial ability and condition and signed by the applicant under penalty of perjury.

In any case in which further financial information would assist the registrar in an investigation, the registrar may obtain such information or may require any licensee or applicant under investigation pursuant to this chapter to provide such additional financial information as the registrar may deem necessary.

The financial information required by the registrar shall be confidential and not a public record, but, where relevant, shall be admissible as evidence in any administrative hearing or judicial action or proceeding.

The registrar may destroy any financial information which has been on file for a period of at least three years.

### **Signatures on Applications**

7067.6. Every application form for an original license, for renewal thereof, for reinstatement or for reissuance, including both active and inactive licenses, shall be signed by both the applicant and by the person qualifying on behalf of an individual or firm as referred to in Section 7068.1.

### **Experience and Knowledge Required**

7068. (a) The board shall require an applicant to show such degree of knowledge and experience in the classification applied for, and such general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(b) An applicant shall qualify in regard to his or her experience and knowledge in one of the following ways:

(1) If an individual, he or she shall qualify by personal appearance or by the appearance of his or her responsible managing employee who is qualified for the same license classification as the classification being applied for.

(2) If a copartnership or a limited partnership, it shall qualify by the appearance of a general partner or by the appearance of a responsible managing employee who is qualified for the same license classification as the classification being applied for.

(3) If a corporation, or any other combination or organization, it shall qualify by the appearance of a responsible managing officer or responsible managing employee who is qualified for the same license classification as the classification being applied for.

(c) An applicant who has been convicted of a violation of Section 7028 may not apply for a license for a one-year period from the date of conviction. Upon submittal of an application the applicant shall be subject to Section 7071.6.

(d) A responsible managing employee for the purpose of this chapter shall mean an individual who is a bona fide employee of the applicant and is actively engaged in the classification of work for which that responsible managing employee is the qualifying person in behalf of the applicant.

(e) The board shall, in addition, require an applicant who qualifies by means of a responsible managing employee under either paragraph (1) or (2) of subdivision (b) to show his or her general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(f) Except in accordance with Section 7068.1, no person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of subdivision (b) shall hold any other active contractor's license while acting in the capacity of a qualifying individual pursuant to this section.

(g) At the time of application for renewal of a license, the responsible managing individual shall file a statement with the registrar, on a form prescribed by the registrar, verifying his or her capacity as a responsible managing individual to the licensee.

(h) Statements made by or on behalf of an applicant as to the applicant's experience in the classification applied for shall be verified by a qualified and responsible person. In addition, the registrar shall, as specified by board regulation, randomly review a percentage of such statements for their veracity.

(i) The registrar shall review experience gained by applicants from other states to determine whether all of that experience was gained in a lawful manner in that state.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### **Responsibility of Qualifying Individual**

7068.1. The person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations as is necessary to secure full compliance with the provisions of this chapter and the rules and regulations of the board relating to the construction operations. This person shall not act in the capacity of the qualifying person for an additional

individual or firm unless one of the following conditions exists:

(a) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity.

(b) The additional firm is a subsidiary of or a joint venture with the first. "Subsidiary," as used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the other firm.

(c) With respect to a firm under paragraph (2) or (3) of subdivision (b) of Section 7068, the majority of the partners or officers are the same.

(d) Notwithstanding subdivisions (a), (b), and (c), a qualifying individual may act as the qualifier for no more than three firms in any one-year period. Any qualifier, on January 1, 1992, who is acting as the qualifier for more than three firms shall comply with this section by January 1, 1993.

(e) Failure to comply with the requirement set forth in subdivision (d) shall result in the disassociation of the qualifying individual and automatic suspension of the licensee's contractor's license effective January 1, 1993.

"Firm," as used in this section, means a copartnership, a limited partnership, a corporation, or any other combination or organization described in Section 7068.

"Person," as used in this section, is limited to persons natural, notwithstanding the definition of "person in Section 7025 of this chapter.

The board shall require every applicant or licensee qualifying by the appearance of a qualifying individual to submit detailed information on the qualifying individual's duties and responsibilities for supervision and control of the applicant's construction operations.

*(Amended by Stats. 1991, Chapter 145 (AB 425).)*

### **Disassociation of Responsible Managing Officer or Employee; Notification of Registrar; Replacement**

7068.2. If the responsible managing officer or responsible managing employee disassociates from the licensed entity, the licensee, or the qualifier shall notify the registrar in writing, and the licensee shall replace the qualifier, within 90 days from the date of disassociation.

To replace a responsible managing officer or responsible managing employee, the licensee shall file an application as prescribed by the registrar, accompanied by the fee fixed by this chapter, designating an individual to qualify as required by this chapter.

Upon failure to replace the qualifier within 90 days of the disassociation the license shall be automatically suspended or the classification removed at the end of the 90 days.

The registrar may review and accept the petition of a licensee who disputes the date of disassociation or who has failed to notify and replace the qualifier within the

prescribed time, upon a showing of good cause by the contractor. This petition shall be received within 90 days from the date of the board's notice that the license will be suspended if the qualifier is not replaced. The registrar may grant only one 90-day extension to replace the qualifier.

Upon failure of the licensee or the qualifier to notify the registrar of the disassociation within 90 days from the date of disassociation, the license shall be automatically suspended or the classification removed and the qualifier removed from the license effective the date the written notification is received at the board's headquarters office.

The person qualifying on behalf of an individual or firm under subdivision (a), (b), or (c) of Section 7068 shall be responsible for the licensee's construction operations until the board receives the written notification of disassociation. Failure of the licensee or the qualifier to notify the registrar of the qualifier's disassociation within 90 days of the disassociation is grounds for disciplinary action.

#### **Substitution of Examinee; Misdemeanor**

7068.5. It is a misdemeanor for any person other than the examinee named in the application to take the qualifying examination on behalf of an applicant for a contractor's license.

#### **Provision of Examination to Another; Misdemeanor**

7068.7. Any person who obtains and provides for another the qualifying examination, or any part thereof, when not authorized to do so, is guilty of a misdemeanor.

#### **Qualifications; Criminal Record**

7069. An applicant, and each officer, director, partner, associate and responsible managing employee thereof, shall not have committed acts or crimes which are grounds for denial of licensure under Section 480.

#### **Prior License Status**

7070. An applicant shall show that he or she has never been denied a license or had a license revoked for reasons that would preclude the granting of the license applied for. Where the board has denied an application for license under this chapter or Chapter 2 (commencing with Section 480) of Division 1.5, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the earliest date that the applicant may reapply for a license, which shall be one year from the effective date of the decision or service of notice under subdivision (b) of Section 485, unless the board prescribes an earlier date.

*(Amended by Stats. 1997, Chapter 334 (SB 299).)*

#### **Qualifications of Groups**

7071. No license shall be issued to a corporation, copartnership, or other combination or organization if any responsible officer or director of such corporation, or other combination or organization, or any member of such copartnership does not meet the qualifications required of an applicant other than those qualifications relating to knowledge and experience.

#### **Privileges of Member of Armed Forces**

7071.3. Notwithstanding any other provision of this code, the holder of a current valid license under this chapter who has entered or enters the armed forces of the United States may designate a responsible managing person or persons to act for him while in the armed forces and until one year after his discharge therefrom, after which time the authority to so act for the licensee shall terminate. The renewal fee shall be paid for any such licensee so designating others to act for him.

Any license shall remain in full force and effect for 30 days after the entrance of the licensee into the armed forces, but he shall prior to the expiration of such 30-day period provide the registrar with the name or names of the persons so designated to conduct his business. The registrar may qualify such persons in any manner he may adopt. Persons so designated shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

Persons so designated committing any of the acts or crimes constituting grounds for denial of licensure under Section 480 shall be removed from the business of such licensee after a hearing as provided in this chapter.

#### **Contractor's Bond; Form; Persons Benefitted**

7071.5. The contractor's bond required by this article shall be executed by an admitted surety in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the licensee or applicant. The contractor's bond shall be for the benefit of the following:

- (a) Any homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.
- (b) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.
- (c) Any employee of the licensee damaged by the licensee's failure to pay wages.
- (d) Any person or entity, including an express trust fund described in Section 3111 of the Civil Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of the licensee's failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage to an express trust fund is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

*(Amended by Stats. 1999, Chapter 795 (SB 914).)*

### **Bond as Condition to Issuance, Renewal, Reinstatement, etc.**

7071.6. (a) Except as provided in Section 7071.8 and subdivision (b), the board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of seven thousand five hundred dollars (\$ 7,500).

(b) Notwithstanding subdivision (a), the board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license for the license classification of swimming pool contractor, that the applicant or licensee file or have on file a contractor's bond in the sum of ten thousand dollars (\$ 10,000).

(c) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

*(Added Stats. 1995, Chapter 467 (SB 1061).)*

NOTE: Former section 7071.6 was amended by Stats. 1994, Chapter 26, sec. 206.5, urgency, eff. March 30, 1994, inoperative July 1, 1994, and repealed, operative January 1, 1995, by its own terms.

### **Acceptance of Bond**

7071.7. (a) Except as provided in subdivision (b), the registrar shall accept a bond required by Section 7071.6, 7071.8, or 7071.9 as of the effective date shown on the bond, if the bond is received by the registrar within 90 days after that date, and shall reinstate the license to which the bond pertains, if otherwise eligible, retroactive to the effective date of the bond.

(b) Notwithstanding subdivision (a), the registrar shall accept a bond as of the effective date shown on the bond, even if the bond is not received by the registrar within 90 days after that date, upon a showing by the licensee, on a form acceptable to the registrar, that the failure to have a bond on file was due to circumstances beyond the control of the licensee. The registrar shall reinstate the license to which the bond pertains, if otherwise eligible, retroactive to the effective date of the bond.

### **Bond After Suspension or Revocation of License**

7071.8. (a) This section applies to an application for a license, for renewal or restoration of a license, an application to change officers of a corporation, or for continued valid use of a license which has been disciplined, whether or not the disciplinary action has been stayed, made by any of the following persons or firms:

(1) Any person whose license has been suspended or revoked as a result of disciplinary action, or any person who was a qualifying individual for a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the licensee's license, whether or not the qualifying individual had knowledge or participated in the prohibited act or omission.

(2) Any person who was an officer, director, member, or partner of a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the licensee's license and who had knowledge of or participated in the act or omission which was the cause for the disciplinary action.

(3) Any partnership, corporation, firm, or association of which any existing or new officer, director, member, partner, or qualifying person has had a license suspended or revoked as a result of disciplinary action.

(4) Any partnership, corporation, firm, or association of which any officer, director, member, partner, or qualifying person was a member, officer, director, or partner of a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of the license, and who had knowledge of or participated in the act or omission which was the cause for the disciplinary action.

(b) The board shall require as a condition precedent to the issuance, reissuance, renewal, or restoration of a license to the applicant, or to the approval of an application to change officers of a corporation, or removal of suspension, or to the continued valid use of a license which has been suspended or revoked, but which suspension or revocation has been stayed, that the applicant or licensee file or have on file a contractor's bond in a sum to be fixed by the registrar based upon the seriousness of the violation, but which sum shall not be less than fifteen thousand dollars (\$ 15,000) nor more than 10 times that amount required by Section 7071.6.

(c) The bond is in addition to, may not be combined with, and does not replace any other type of bond required by this chapter. The bond shall remain on file with the registrar for a period of at least two years and for such additional time as the registrar may determine. The bond period shall run only while the license is current, active, and in good standing, and shall be extended until such time as the license has been current, active, and in good standing for the required period. Each applicant or licensee shall be required to file only one disciplinary contractor's bond of the type described in this section for each application or license subject to this bond requirement.

*(Amended by Stats. 1992, Chapter 294 (AB 2347); amended by Stats. 1994, Chapter 192 (AB 3475).)*



### Qualifying Individual's Bond; Necessity

7071.9. (a) If the qualifying individual, as referred to in Sections 7068 and 7068.1, is not either the proprietor, a general partner, or joint licensee, he or she shall file or have on file a qualifying individual's bond as provided in Section 7071.10 in the sum of seven thousand five hundred dollars (\$7,500). This bond is in addition to, and may not be combined with, any contractor's bond required by Sections 7071.5 to 7071.8, inclusive, and is required for the issuance, reinstatement, reactivation, or continued valid use of a license.

(b) The responsible managing officer of a corporation shall not be required to file or have on file a qualifying individual's bond, if he or she owns 10 percent or more of the voting stock of the corporation and certifies to that fact on a form prescribed by the registrar.

*(Amended by Stats 1993 Chapter 1264 (SB 574).)*

### Qualifying Individual's Bond; Form; Filling; Beneficiaries

7071.10. (a) The qualifying individual's bond required by this article shall be executed by an admitted surety insurer in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the qualifying individual. The qualifying individual's bond shall be for the benefit of the following persons:

(1) Any homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

(2) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(3) Any employee of the licensee damaged by the licensee's failure to pay wages.

(4) Any person or entity, including an express trust fund described in Section 3111 of the Civil Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, that is damaged as the result of the licensee's failure to pay fringe benefits for its employees including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder (without regard to whether the work was performed on a public or private work). Damage to an express trust fund is limited to employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

(b) The qualifying individual's bond shall not be required in addition to the contractor's bond when the qualifying individual is himself or herself the proprietor under subdivision (a) or a general partner under subdivision (b) of Section 7068.

*(Amended by Stats.1999, Chapter 795 (SB 914).)*

### Action on Claim Against Bond; Preferred Claim; Limitation on Amount and Time on Action; Notice of Payment; Disciplinary Action; Legal Fees; Claims Against Deposit

7071.11. (a) A copy of the complaint in a civil action commenced by a person claiming against a bond required by this article shall be served by registered or certified mail upon the registrar by the clerk of the court at the time the action is commenced and the registrar shall maintain a record, available for public inspection, of all actions so commenced. The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of four thousand dollars (\$4,000). If any bond which may be required is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their respective claims. Any action, other than an action to recover wages or fringe benefits, against a contractor's bond or a bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(b) When the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, notify the registrar. The notice shall contain, on a form prescribed by the registrar, the name and license number of the contractor, the surety bond number, the amount of payment, the statutory basis upon which the claim is made, and the names of the person or persons to whom payments are made.

(c) Any judgment or admitted claim against, or good faith payment from, a bond required by this article shall constitute grounds for disciplinary action against the licensee, except in those cases of good faith payment where the licensee has, in writing, timely instructed the surety not to make payment from the bond on his or her account, upon the specific grounds that (1) the claim is opposed by the licensee, and (2) the licensee has, in writing, previously directed to the surety a specific and reasonable basis for his or her opposition to payment. The license may not be

reissued or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, the license may not be reissued or reinstated while any surety remains unreimbursed for loss and expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to disciplinary action under this section. The board shall require the licensee to file a new bond in an amount as required pursuant to Section 7071.8.

(d) Legal fees may not be charged against the bond by the board.

(e) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment thereof shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(f) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within three years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. If the board is notified of a complaint relative to a claim against the deposit, the deposit shall not be released until the complaint has been adjudicated.

*(Amended by Stats. 1986, Chapter 1353, operative July 1, 1987; Stats. 1990, Chapter 1326 (AB 3480); amended by Stats 1993 Chapter 1264 (SB 574); Stats. 1999, Chapter 795 (SB 914); Stats. 2001, Chapter 728 (SB 724).)*

### **Deposit in Lieu of Bond**

7071.12. Instead of the bond provided by this article a deposit may be given pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure.

### **Reference in Advertising Prohibited**

7071.13. Any reference by a contractor in his advertising, soliciting, or other presentments to the public to any bond required to be filed pursuant to this chapter is a ground for the suspension of the license of such contractor.

### **Discrimination**

7071.14. No licensee or applicant for a license under this chapter shall be denied a contractor's license bond solely because of his race, religious creed, color, national origin, ancestry, or sex. Whoever denies a contractor's license bond solely on the grounds specified herein is liable for each and every such offense for the actual damages, and two hundred fifty dollars (\$ 250) in addition thereto, suffered by the licensee or applicant for a license.

### **Failure To Maintain Sufficient Bond; Effect**

7071.15. If a licensee fails to maintain a sufficient bond required by this article, the license is subject to suspension or revocation pursuant to Section 996.020 of the Code of Civil Procedure.

### **Requirement of Bond; Failure of Payment**

7071.17. Requirement of bond for applicant who has unsatisfied final judgment for failure to pay contractor, subcontractor, consumer, materials supplier, or employee

(a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an entered and unsatisfied final judgment from a court of law, file or have on file with the board a judgment bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the judgment bond is filed with the board. The judgment bond is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an

unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any entered and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the judgment bond, satisfaction of judgment, or notarized copy of an accord reached with any individual holding an unsatisfied final judgment is filed.

(b) Notwithstanding any other provision of law, the licensee shall notify the registrar in writing of any entered and unsatisfied judgments within 90 days from the date of judgment. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied judgment. The suspension shall not be removed until proof of satisfaction of judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar. If the licensee notifies the registrar in writing within 90 days of the date of judgment of any entered and unsatisfied judgments, the board shall require as a condition to the continual maintenance of the license that the licensee file or have on file with the board a judgment bond sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments. The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. The licensee may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to file the bond, maintain the bond, or abide by the accord, can

only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord, reached with any individual holding an unsatisfied final judgment, has been filed.

(e) This section applies only with respect to an unsatisfied judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) This section shall not apply to an applicant or licensee when a bankruptcy proceeding has been filed.

(g) Except as otherwise provided, the judgment bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the outstanding final judgment, the board may authorize the judgment bond be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the judgment bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term "judgment" includes any final arbitration award.

(j) The qualifying person and any member of the licensee or personnel of the licensee named as a judgment debtor in an unsatisfied final judgment from a court of law shall be automatically prohibited from serving as an officer, director, associate, partner, owner, qualifying individual, or other personnel of record of another licensee. This prohibition shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, a cash deposit may be submitted in lieu of the judgment bond.

*(Added Stats. 1995, Chapter 467 (SB 1061); amended by Stats. 1997, Chapter 469 (AB 772).)*

### EXTRACT FROM THE CODE OF CIVIL PROCEDURE

#### 116.220. Jurisdiction

(a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars (\$5,000).

(2) Except as provided in subdivisions (c), (e), and (f), to

enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars (\$5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars (\$5,000).

(4) To confirm, correct, or vacate a fee arbitration award

not exceeding five thousand dollars (\$5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed (1) two thousand five hundred dollars (\$2,500), or (2) on and after January 1, 2000, four thousand dollars (\$4,000), if the defendant guarantor charges a fee for its guarantor or surety services or the defendant guarantor is the Registrar of the Contractors' State License Board.

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the

excess may be waived, but any waiver shall not become operative until judgment.

(e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections facility or a Youth Authority facility, the small claims court shall have jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or determination of the plaintiff's administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the judicial officer shall, at his or her discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide such proof.

(g) For purposes of this section, "department" includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

*Amended by Stats. 1994, Chapter 479 (AB 3219); Stats. 1995, Chapter 366 (AB 725); Stats. 1998, Chapter 240 (AB 771); Stats. 1999, Chapter 982 (AB 1678).)*

### **Application Fee and Acceptable Application**

7072. Following receipt of the application fee and an application furnishing complete information in the manner required by the registrar, and after such examination and investigation as he may require, the registrar, within 15 days after approval of the application, shall notify the applicant that a license may be issued to him on payment of the initial license fee provided in Article 8 (commencing at Section 7135), and, when the initial license fee is paid, shall issue a license to him permitting him to engage in business as a contractor under the terms of this chapter.

### **Issuance of License; Plastic Pocket Card**

7072.5. (a) Upon the issuance of a license, a plasticized pocket card of a size, design, and content as may be determined by the registrar shall be issued at no cost to each licensee, or to the partners or officers or responsible managing officer of licensees licensed as other than individuals, which card shall be evidence that the licensee is duly licensed pursuant to this chapter. All cards issued shall be surrendered upon the suspension, revocation, or denial of renewal of the license, and shall be mailed or delivered to the board within five days of the suspension, revocation, or denial.

(b) When any person to whom a card is issued terminates his or her position, office, or association with a licensee which is licensed as other than an individual, that person shall surrender his or her card to the licensee and within

five days thereafter the card shall be mailed or delivered by the licensee to the board for cancellation.

(c) The Contractors State License Board shall, prior to production of the plasticized cards, develop a system for the reporting and tracking of lost or stolen cards. The cards shall be issued to all licensees upon license renewal on and after July 1, 1989.

*(Added by Stats. 1988, Chapter 1495.)*

### **Denial of Application**

7073. The registrar may deny any application where the applicant has failed to comply with any rule or regulation adopted pursuant to this chapter or where there are grounds for denial under Section 480. Procedures for denial of an application shall be conducted in accordance with Section 485.

### **Factors Voiding Application for Original License, Additional Classification or Change of Qualifier; Retention of Application by Registrar; Reapplication Fee**

7074. (a) Except as otherwise provided by this section, an application for an original license, for an additional classification or for a change of qualifier shall become void when:

(1) The applicant or examinee for the applicant has failed to appear for the scheduled qualifying examination and

fails to request and pay the fee for rescheduling within 90 days of notification of failure to appear, or, after being rescheduled, has failed to appear for a second examination.

(2) The applicant or the examinee for the applicant has failed to achieve a passing grade in the scheduled qualifying examination, and fails to request and pay the fee for rescheduling within 90 days of notification of failure to pass the examination.

(3) The applicant or the examinee for the applicant has failed to achieve a passing grade in the qualifying examination within 18 months after the application has been deemed acceptable by the board.

(4) The applicant for an original license, after having been notified to do so, fails to pay the initial license fee within 90 days from the date of such notice.

(5) The applicant, after having been notified to do so, fails to file within 90 days from the date of the notice any bond or cash deposit or other documents that may be required for issuance or granting pursuant to this chapter.

(6) After filing, the applicant withdraws the application.

(7) The applicant fails to return the application rejected by the board for insufficiency or incompleteness within 90 days from the date of original notice or rejection.

(8) The application is denied after disciplinary proceedings conducted in accordance with the provisions of this code.

(b) The void date on an application may be extended up to 90 days or one examination may be rescheduled without a fee upon documented evidence by the applicant that the failure to complete the application process or to appear for an examination was due to a medical emergency or other circumstance beyond the control of the applicant.

(c) An application voided pursuant to the provisions of this section shall remain in the possession of the registrar for the period as he or she deems necessary and shall not be returned to the applicant. Any reapplication for a license shall be accompanied by the fee fixed by this chapter.

### **Display of License; Proof of Possession and Renewal**

7075. The license shall be displayed in the licensee's main office or chief place of business. Satisfactory evidence of the possession of a license and the current renewal thereof shall be provided by the licensee upon demand.

*(Amended by Stats. 1990, Chapter 1326 (AB 3480); Stats. 2001, Chapter 728 (SB 724).)*

### **License is Not Transferable; Reissue of License Number**

7075.1. (a) No license, regardless of type or classification, shall be transferable to any other person or entity under any circumstances.

(b) A license number may be reissued after cancellation, revocation, suspension, or expiration beyond the renewal

period specified in Section 7141, only under the following circumstances:

(1) To an individual upon application.

(2) To a partnership upon application if there is no change in the partners or partnership structure.

(3) To a corporation upon application if there is no change in the status of the corporation as registered with the California Secretary of State.

(c) A license number may be reissued or reassigned to a different entity only under the following conditions:

(1) To a corporation when the parent corporation has merged or created a subsidiary, the subsidiary has merged into the parent corporation, or the corporation has changed its filing status with the Secretary of State from a domestic corporation to a foreign corporation or from a foreign corporation to a domestic corporation, and the new entity is being formed to continue the business of the formerly licensed corporation.

(2) To an individual when the individual is an immediate family member of a licensed individual who is deceased or absent and the license is required to continue an existing family contracting business.

(3) To a corporation when created by immediate members of an individual licensee's family to continue an existing deceased or absent individual licensee's contracting business.

(4) To a corporation when the corporation is formed by an individual licensee and the individual licensee maintains ownership directly or indirectly of shares evidencing more than 50 percent of the voting power.

For purposes of this section, an immediate family member of a deceased or absent licensed individual is either a spouse, brother, sister, son, daughter, stepson, stepdaughter, grandson, granddaughter, son-in-law, or daughter-in-law.

*(Added by Stats. 1990, chapter 1326 (AB 3480), eff. September 25, 1990; amended by Stats. 1992, chapter 746 (AB 2424).)*

### **Events Resulting in Cancellation of License; Continuance of License**

7076. (a) An individual license shall be canceled upon the death of a person licensed as an individual. An immediate member of the family of the deceased licensee may request a continuance of the license to complete projects in progress and undertake new work for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. Approval of the continuance of an individual license may be contingent upon meeting the bond requirements of Sections 7071.5 and 7071.6 within 90 days of notification by the board of that requirement. The immediate member of the family must apply for and obtain his or her own license to continue contracting after the continuance expires.

(b) A partnership license shall be canceled upon the death of a general partner. The remaining partner or partners

shall notify the registrar in writing within 90 days of the death of a general partner. Failure to notify the registrar within 90 days of the death is grounds for disciplinary action.

The remaining general partner or partners may request a continuance of the license to complete projects in progress and undertake new work for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. The remaining general partner or partners must apply for and obtain a new license to continue contracting after the continuance expires.

(c) A partnership license shall be canceled upon the disassociation of a general partner or upon the dissolution of the partnership. The disassociating partner or the remaining partner or partners shall notify the registrar in writing within 90 days of the disassociation of a general partner or dissolution of the partnership. Failure to notify the registrar of the disassociation or dissolution within 90 days shall cause the license to be canceled effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar within 90 days of the disassociation or dissolution is grounds for disciplinary action. The remaining general partner or partners may request a continuance of the license to complete projects contracted for or in progress prior to the date of disassociation or dissolution for a reasonable length of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the disassociation or dissolution. The remaining general partner or partners must apply for and obtain a new license to undertake new work and to continue contracting after the continuance expires.

(d) The general partner or partners shall notify the registrar in writing within 90 days of the death of a limited partner. Failure to notify the registrar within 90 days of the death is grounds for disciplinary action.

The death of a limited partner will not affect the partnership license unless the partnership license has only one limited partner. In this case, the license will be canceled upon the death of the limited partner unless a new limited partner is added to the license within 90 days of the death.

If the license is canceled, the remaining general partner or partners may request a continuance of the license to complete projects in progress and to undertake new work for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. The remaining general partner or partners must apply for and obtain a new license to continue contracting after the continuance expires.

(e) The general partner or partners shall notify the registrar in writing within 90 days of the disassociation of a limited partner. Failure to notify the registrar of the disassociation, within 90 days, shall cause the disassocia-

tion to be effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar within 90 days of the disassociation is grounds for disciplinary action.

The disassociation of a limited partner will not affect the partnership license unless the partnership license has only one limited partner. In this case, the license will be canceled upon the disassociation of the limited partner unless a new limited partner is added to the license within 90 days of the disassociation. If the license is canceled, the remaining general partner or partners may request a continuance of the license to complete projects contracted for or in progress prior to the date of disassociation for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days after the death. The remaining general partner or partners must apply for and obtain a new license to undertake new work and to continue contracting after the continuance expires.

(f) A joint venture license shall be canceled upon the cancellation, revocation, or disassociation of any of its entity licenses or upon the dissolution of the joint venture. The registrar shall be notified in writing within 90 days of the disassociation of a joint venture entity or dissolution of the joint venture. Failure to notify the registrar of the disassociation or dissolution within 90 days shall cause the license to be canceled effective the date the written notification is received at the board's headquarters office. Failure to notify the registrar within 90 days of the disassociation or dissolution is grounds for disciplinary action.

Any remaining entity or entities may request a continuance of the license to complete projects contracted for or in progress prior to the date of disassociation or dissolution for a reasonable amount of time to be determined by rules of the board. The request for a continuance must be made in writing and received at the board's headquarters office within 90 days of the disassociation or dissolution. The remaining entity or entities must apply for and obtain a new license to undertake new work and to continue contracting after the continuance expires.

(g) Any individual, partnership, or joint venture license continued in accordance with this section is subject to all other provisions of this chapter.

(h) A corporation license shall be canceled upon the corporation's dissolution, merger, or surrender of its right to do business in this state. The corporation shall notify the registrar in writing within 90 days of the dissolution, merger, or surrender. Failure to notify the registrar of the dissolution, merger, or surrender within 90 days shall cause the license to be canceled effective the date written notification is received at the board's headquarters office. If the corporation fails to notify the board of the dissolution, merger, or surrender, the corporation license shall be canceled 60 days after the board's discovery when researching the corporate records of the Secretary of State. Failure to notify the registrar within 90 days of the dissolution, merger, or surrender is grounds for disciplinary action.

(i) The registrar shall review and accept the petition of a licensee who disputes the date of cancellation upon a showing of good cause. This petition shall be received within 90 days of the board's official notice of cancellation.

*(Added by Stats. 1990, Chapter 1326 (AB 3480); former Section 7076 was repealed by the same statute; Added Stats. 1995, Chapter 467 (SB 1061).)*

### **Cancellation of Voluntarily Surrendered License**

7076.1. Upon the voluntary surrender of a license by a licensee, the registrar shall order the license canceled. Cancellation will be effected upon receipt of the request by the registrar. No refund will be made of any fee which a licensee may have paid prior to the surrender of the license.

To reinstate a canceled license the licensee must pay all of the fees and meet all of the qualifications and requirements set forth in this chapter for obtaining an original license.

### **Suspension for Failure to be Registered and in Good Standing After Notice**

7076.2. Notwithstanding any other provision of law, the failure of a contractor licensed to do business as a corporation in this state to be registered and in good standing with the Secretary of State after notice from the registrar shall result in the automatic suspension of the corporate license by operation of law. The registrar shall notify the corporate licensee in writing of its failure to be registered and in good standing with the Secretary of State and that the licensee shall be suspended 30 days from the date of the notice if the corporate licensee does not provide proof satisfactory to the registrar that it is properly registered and in good standing with the Secretary of State. Reinstatement may be made at any time following the suspension by providing proof satisfactory to the registrar that the corporate license is properly registered and in good standing.

*(Added by Stats. 1995, Chapter 467 (SB 1061).)*

### **Inactive License; Renewal; Reactivation; Disciplinary Actions Not Barred**

7076.5. (a) A contractor may inactivate his or her license by submitting a form prescribed by the registrar accompanied by the current active license certificate. When the current license certificate has been lost, the licensee shall pay the fee prescribed by law to replace the license certificate. Upon receipt of an acceptable application to inactivate, the registrar shall issue an inactive license certificate to the contractor. The holder of an inactive license shall not be entitled to practice as a contractor until his or her license is reactivated.

(b) Any licensed contractor who is not engaged in work or activities which require a contractor's license may apply for an inactive license.

(c) Inactive licenses shall be valid for a period of four years from their due date.

(d) During the period that an existing license is inactive, no bonding requirement pursuant to Section 7071.6, 7071.8 or 7071.9 or qualifier requirement pursuant to Section 7068 shall apply. An applicant for license having met the qualifications for issuance may request that the license be issued inactive unless the applicant is subject to the provisions of Section 7071.8.

(e) The board shall not refund any of the renewal fee which a licensee may have paid prior to the inactivation of his or her license.

(f) An inactive license shall be renewed on each established renewal date by submitting the renewal application and paying the inactive renewal fee.

(g) An inactive license may be reactivated by submitting an application acceptable to the registrar, by paying the full renewal fee for an active license and by fulfilling all other requirements of this chapter. No examination shall be required to reactivate an inactive license.

(h) The inactive status of a license shall not bar any disciplinary action by the board against a licensee for any of the causes stated in this chapter.

### **Probationary License**

7077. Every original license, except an additional classification issued pursuant to Section 7059, shall be a probationary license until such time as the license is renewed. If information is brought to the attention of the registrar, during such probationary period, regarding any act or omission of the licensee constituting grounds for denial, revocation, or suspension of an application or license, such that, in the registrar's discretion, it would be proper to revoke the probationary license, the registrar shall forthwith notify the applicant to show cause within not more than 30 days, why the probationary license should not be revoked. The proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein. A probationary license shall not be renewed during the pendency of any proceedings brought pursuant to this section.

## **ARTICLE 6. RECORDS**

### **Application, Public Posting**

7080.5. When an application has been accepted by the registrar, the name and address of the applicant, every classification for which the applicant has applied, and the names and titles of all personnel who have signed the application shall be publicly posted by the registrar, on the day following acceptance, in the office of the Contractors State License Board in Sacramento.

### **Publication of Register**

7081. Whenever funds are available for the purpose, the registrar shall publish a list of the names and addresses of contractors, registered under this chapter and of the licenses issued, suspended or revoked, and such further

information with respect to this chapter and its administration as he deems proper.

He may furnish the lists to such public works and building departments, public officials or public bodies, and other persons interested in or allied with the building and construction industry in this or any other State as he deems advisable and, at such intervals as he deems necessary whenever funds are available.

Copies of the lists may also be furnished by the registrar upon request to any firm or individual upon payment of a reasonable fee fixed by the registrar.

### **Dissemination of Additional Information**

7082. Whenever funds are available for the purpose, the registrar may publish and disseminate to licentiates of the board, and public officials or other persons interested in or allied with the building and construction industry, such information with relation to the administration and enforcement of this chapter as he deems necessary to carry out its purposes.

### **Changes of Personnel, Business Name, Address, Bond Exemption, Multiple License Exemption; Failure to Notify Registrar Within 90 Days**

7083. All licensees shall notify the registrar in writing within 90 days of any change to information recorded under this chapter. This notification requirement shall include, but not be limited to, changes in address, personnel, business name, qualifying individual bond exemption pursuant to Section 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

Failure of the licensee to notify the registrar of any change to information within 90 days shall cause the change to be effective the date the written notification is received at the board's headquarters office.

Failure to notify the registrar of the changes within the 90 days is grounds for disciplinary action.

*(Amended by Stats. 1990, Chapter 1326 (AB 3480).)*

### **Address Correction; Licensees with Expired, Canceled, or Inactive Licenses**

7083.1. Any licensee whose license is expired, canceled, or inactive, shall notify the registrar in writing of any change of address of record within 90 days, and shall maintain a current address of record during the three-year period immediately following the expiration, cancellation, or inactivation of the license.

### **Rules and Regulations**

7084. The registrar, with the approval of the director may adopt and promulgate the rules and regulations he deems necessary to carry out the provisions of this article.

## **ARTICLE 6.2. ARBITRATION**

### **Arbitration**

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151 and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation, and is in good standing at the time of referral to arbitration.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), "material damages" means damages greater than five thousand dollars (\$ 5,000) and less than fifty thousand dollars (\$ 50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price is equal to or less than five thousand dollars (\$ 5,000), or the demand for damages is equal to or less than five thousand dollars (\$ 5,000) regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

*(Amended by Stats. 1992, Chapter 597 (AB 497); amended by Stats. 1998, Chapter 492 (SB 1792).)*

### **Awards**

7085.2. An arbitrator may render an award and that award shall be deemed to be an order of the registrar.

### **Arbitration Notice**

7085.3. Once the registrar determines that arbitration pursuant to subdivision (a) of Section 7085 would be a



suitable means of resolving the dispute, the registrar shall notify the complainant and the licensee of this decision. The registrar shall also notify the complainant of the consequences of selecting administrative arbitration over judicial remedies and advise the parties of their rights to retain counsel at their own expense. The registrar shall forward an “agreement to arbitrate” to the complainant and the licensee. This agreement shall be returned to the registrar within 30 calendar days of the date that the agreement is mailed by the registrar. The return of this agreement by the parties shall authorize the registrar to proceed with administrative arbitration.

*(Amended by Stats. 1989, Chapter 1132, eff. Sept. 29, 1989.)*

### Referral to Arbitration

7085.4. (a) For cases that the registrar determines to refer to arbitration under subdivision (a) of Section 7085, once the complainant and the licensee authorize the registrar to proceed with administrative arbitration, the registrar shall refer the agreement to arbitrate to an arbitrator or an arbitration association approved by the board.

(b) Once the registrar determines that a complaint must be referred to arbitration pursuant to subdivision (b) of Section 7085, the registrar shall notify the complainant and the licensee of that decision. The registrar shall inform the parties of the consequences of administrative arbitration over judicial remedies and shall advise the parties of their right to retain counsel at their own expense if they so choose. The registrar shall forward a notice to arbitrate to the complainant and the licensee. This notice shall be returned to the registrar within 30 calendar days of the date that the notice is mailed by the registrar. The complainant’s failure to return an executed copy of the notice shall result in the closure of the complaint.

Notwithstanding Section 7085.5, a licensee’s failure to return an executed copy of the notice shall not prohibit the registrar from referring the dispute to arbitration or bar the registrar from issuing an order enforcing any award resulting therefrom, pursuant to Section 7085.6, whether the award resulted from a contested hearing or a noncontested hearing.

*(Amended by Stats. 1989, Chapter 1132, eff. Sept. 29, 1989.)*

### Rules of Arbitration

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

(a) All “agreements to arbitrate” shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars or any other remedy sought. The appropriate fee shall be paid by the board from the Contractors’ License Fund.

(b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical

list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the board or appointed arbitration association, in its discretion, directs that a greater number of arbitrators be appointed.

(2) In all cases in which a complaint has been referred to arbitration pursuant to subdivision (b) of Section 7085, the board or the appointed arbitration association shall have the power to appoint an arbitrator to hear the matter.

(3) The board shall adopt regulations setting minimum qualification standards for listed arbitrators based upon relevant training, experience, and performance.

(c) No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(d) The board or appointed arbitration association may appoint another arbitrator if a vacancy occurs, or if an appointed arbitrator is unable to serve in a timely manner.

(e) (1) The board or appointed arbitration association shall provide the parties with a list of the times and dates, and locations of the hearing to be held. The parties shall notify the arbitrator, within seven calendar days of the mailing of the list, of the times and dates convenient to each party. If the parties fail to respond to the arbitrator within the seven-day period, the arbitrator shall fix the time, place, and location of the hearing. An arbitrator may, at the arbitrator’s sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who so desires may be present at the inspection.

(2) The board or appointed arbitration association shall fix the time, place, and location of the hearing for all cases referred to arbitration pursuant to subdivision (b) of Section 7085. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who desires may be present at the inspection.

(f) Any person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(g) Hearings shall be adjourned by the arbitrator only for good cause.

(h) A record is not required to be taken of the proceedings. However, any party to the proceeding may have a record made at its own expense. The parties may make appropriate notes of the proceedings.

(i) The hearing shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the case by both parties. Consistent with the expedited nature of arbitration, the arbitrator shall establish the extent of, and schedule for, the protection of relevant documents and other information, the identification of any witnesses to be called, and a schedule for any hearings to elicit facts solely within the knowledge of one party. The complaining party shall present its claims, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

(j) The arbitration may proceed in the absence of any party who, after due notice, fails to be present. The arbitrator shall require the attending party to submit supporting evidence in order to make an award. An award for the attending party shall not be based solely on the fact that the other party has failed to appear at the arbitration hearing.

(k) The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be required.

(l) The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing. However, a copy shall be simultaneously transmitted to all other parties and to the board or appointed arbitration association for transmittal to the arbitrator or board appointed arbitrator.

(m) The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator

shall declare the hearing closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as requested by the arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

(n) The hearing may be reopened on the arbitrator's own motion. The arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award.

(o) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state his or her objections to the arbitrator in writing, within 10 calendar days of close of hearing, shall be deemed to have waived his or her right to object.

(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith, or for the entry of judgment on an award made thereunder, may be served upon any party (A) by regular mail addressed to that party or his or her attorney at the parties' last known addresses, or (B) by personal service.

(2) Notwithstanding paragraph (1), in all cases referred to arbitration pursuant to subdivision (b) of Section 7085 in which the contractor fails or refuses to return an executed copy of the notice to arbitrate within the time specified, any papers or process specified in paragraph (1) to be sent to the contractor, including the notice of hearing, shall be mailed by certified mail to the contractor's address of record.

(q) The award shall be made promptly by the arbitrator, and unless otherwise agreed by the parties, no later than 30 calendar days from the date of closing the hearing, or if oral hearing has been waived, from the date of transmitting the final statements and proofs to the arbitrator.

The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any extension and the reason therefor.

(r) The arbitrator may grant any remedy or relief which the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board including, but not limited to, specific performance of a contract. The arbitrator, in his or her sole discretion, may award costs or expenses.

(s) The award shall become final 30 calendar days from the date the arbitration award is issued. The arbitrator, upon written application of a party to the arbitration, may correct the award upon the following grounds:

(1) There was an evident miscalculation of figures or an

evident mistake in the description of any person, things, or property referred to in the award.

(2) There is any other clerical error in the award, not affecting the merits of the controversy.

An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the application on the arbitrator, and all other parties to the arbitration. Any party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.

The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the arbitrator or appointed arbitration association within 30 calendar days of the issuance of the award, before the award becomes final. The award shall be in writing, and shall be signed by the arbitrator or a majority of them. If no appeal is filed within the 30-calendar day period, it shall become a final order of the registrar.

(t) Service of the award by certified mail shall be effective if a certified letter containing the award, or a true copy thereof, is mailed by the arbitrator or arbitration association to each party or to a party's attorney of record at their last known address, address of record, or by personally serving any party. Service may be proved in the manner authorized in civil actions.

(u) The expenses of one expert witness appointed by the board, when the services of an expert witness are requested by either party involved in arbitration pursuant to this article, shall be paid by the board. Parties who choose to present the findings of another expert witness as evidence shall pay for those services. Payment for expert witnesses appointed by the board shall be limited to the expert witness costs for inspection of the problem at the construction site, preparation of the expert witness' report, and expert witness fees for appearing or testifying at a hearing. All requests for payment to an expert witness shall be submitted on a form which has been approved by the registrar. All requests for payment to an expert witness shall be reviewed and approved by the board prior to payment. The registrar shall advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

(v) The arbitrator shall interpret and apply these rules insofar as they relate to his or her powers and duties.

(w) The following shall apply as to court procedure and exclusion of liability:

(1) The board, the appointed arbitration association, or any arbitrator in a proceeding under these rules is not a necessary party in judicial proceedings relating to the arbitration.

(2) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(3) The board, the appointed arbitration association, or any arbitrator is not liable to any party for any act or omission in connection with any arbitration conducted under these rules.

*(Amended by Stats. 1988, Chapter 160; amended by Stats. 1989, Chapter 1132, eff. Sept. 29, 1989; amended by Stats. 1998, Chapter 492 (SB 1792).)*

### Failure to Comply

7085.6. The failure of a licensee to comply with an arbitration award rendered under this article shall result in the automatic suspension of a license by operation of law. The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator's award, and that the license shall be automatically suspended 30 calendar days from the date of that notice. The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar. Reinstatement may be made at any time following the suspension by complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within one year of the date of the automatic suspension, the license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102. The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of such a person by another licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

*(Amended by Stats. 1988, Chapter 1619, eff. Sept. 30, 1988.)*

### Enforcement of Award

7085.7. A complainant may enforce an arbitrator's award in accordance with Chapter 2 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

### Review of Action of Registrar

7085.8. Any action of the registrar issued pursuant to this article shall be subject to Section 7013.

*(Amended by Stats. 1988, Chapter 1035.)*

### Disclosure of Complaint

7085.9. Notwithstanding any other provision of law, a complaint referred to arbitration pursuant to Section 7085 is not subject to disclosure to the public until such time as an investigation into an alleged violation of Section 7085.6 has been initiated by the registrar.

*(Added by Stats. 1988, Chapter 1035.)*

## ARTICLE 7. DISCIPLINARY PROCEEDINGS

### Jurisdiction; Failure to Obtain Building Permits

7090. The registrar may upon his or her own motion and shall upon the verified complaint in writing of any person, investigate the actions of any applicant, contractor, or home improvement salesperson within the state and may deny the licensure or the renewal of licensure of, or cite, temporarily suspend, or permanently revoke any license or registration if the applicant, licensee, or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action.

The registrar may proceed to take disciplinary action as in this article provided against an applicant or a person licensed or registered under the provisions of this chapter even though the grounds or cause for such disciplinary action arose upon projects or while the applicant, licensee, or registrant was acting in a capacity or under circumstances or facts which, under the provisions of Sections 7044, 7045, 7046, and 7048, would otherwise exempt the person or his or her operations from the provisions of this chapter.

Notwithstanding any provision of this chapter, if the registrar finds that any contractor licensed or registered under the provisions of this chapter has willfully and deliberately violated any state or local law relating to the issuance of building permits, other than failure to obtain a county or city permit for repair, maintenance, and adjustment of equipment where such repair, maintenance, or adjustment is valued at less than five hundred dollars (\$500) for labor or materials, or where the repair of a part or component part of mechanical equipment consists of replacing such part or component part of mechanical equipment in need of repair with the identical part or component part, the registrar shall take disciplinary action against the contractor's license in accordance with this chapter.

For the purpose of this section, there shall be a rebuttable presumption affecting the burden of proof that construction performed without a permit is a willful and deliberate violation.

*(Amended by Stats. 1997, Chapter 334 (SB 299).)*

### Failure to Pay a Civil Penalty or Comply with an Order of Correction; Effect

7090.1. Notwithstanding any other provisions of law, the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in the automatic suspension of a license by operation of law 30 days after noncompliance with the terms of the order. The registrar shall notify the licensee in writing of the failure to comply with the final order and that the license shall be suspended 30 days from the date of the notice. The licensee may contest the determination of noncompliance within 15 days after service of the notice, by written notice to the registrar. Upon receipt of the written notice, the registrar may

reconsider the determination and after reconsideration may affirm or set aside the suspension. Reinstatement may be made at any time following the suspension by complying with the final order of the citation. If no reinstatement of the license is made within one year of the date of the automatic suspension, the cited license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102. The cited licensee shall also be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar, and the employment, election, or association of such a person by a licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days of the date of disassociation. Upon failure to replace the qualifier within 90 days of the prohibition, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

*(Amended by Stats. 1988, Chapter 1619, eff. Sept. 30, 1988.)*

### Actions Despite Corrections of Conditions; Fraud and Repeated Acts

7090.5. In the event a licensee commits a fraudulent act which is a ground for disciplinary action under Section 7116 of this article, the correction of any condition resulting from such act shall not in and of itself preclude the registrar from taking disciplinary action under this article.

If the registrar finds a licensee has engaged in repeated acts which would be grounds for disciplinary action under this article, and if by correction of conditions resulting from those acts the licensee avoided disciplinary action as to each individual act, the correction of those conditions shall not in and of itself preclude the registrar from taking disciplinary action under this article.

### Time for Action; Powers and Proceedings

7091. (a) A complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for the disciplinary action. An accusation or citation against a licensee shall be filed within four years after the patent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by the section.

(b) A complaint against a licensee alleging commission of any latent acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation,

shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the disciplinary action. An accusation and citation against a licensee shall be filed within 10 years after the latent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 7112. As used in this section “latent act or omission” means an act or omission that is not apparent by reasonable inspection.

(c) An accusation regarding an alleged breach of an express, written warranty for a period in excess of the time periods specified in subdivisions (a) and (b) issued by the contractor shall be filed within the duration of that warranty.

(d) The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

(e) Nothing in this section shall be construed to affect the liability of a surety or the period of limitations prescribed by law for the commencement of actions against a surety or cash deposit.

*(Amended by Stats. 1994, Chapter 1135 (AB 3302); Stats. 2001, Chapter 728 (SB 724).)*

### **Contractors’ State License Board Enforcement Program Monitor; Appointment**

Repeal operative January 31, 2003.

7092. (a) (1) The director shall appoint a Contractors’ State License Board Enforcement Program Monitor no later than January 31, 2001. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and familiarity with relevant administrative procedures.

(c)(1) The enforcement program monitor shall monitor and evaluate the Contractors’ State License Board disciplinary system and procedures, making as his or her

highest priority the reform and reengineering of the board’s enforcement program and operations, and the improvement of the overall efficiency of the board’s disciplinary system.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor’s appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, and the board’s cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

(3) The enforcement program monitor shall exercise no authority over the board’s discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than October 1, 2001, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) This section shall remain in effect only until January 31, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 31, 2003, deletes or extends that date.

*(Added by Stats. 2000, Chapter 1005 (SB 2029); Repealed by Stats. 2000, Chapter 1005 (SB 2029) operative January 31, 2003)*

## EXTRACT FROM THE CIVIL CODE

### DIVISION 3. OBLIGATIONS CHAPTER 5. HOME ROOF WARRANTIES

#### Application of Chapter

1797.90. This chapter shall apply to all contracts and warranties for roofing materials used on a residential structure, including, but not limited to, a manufactured home or mobilehome, and to all contracts and warranties for the installation, repair, or replacement of all or any portion of the roof of a residential structure, including, but not limited to, a manufactured home or mobilehome.

*(Added by Stats. 1993, Chapter 835 (SB 409).)*

#### Necessity for Written Contract

1797.91 Any contract for roofing materials, or for the installation, repair, or replacement of all or any portion of the roof of a residential structure, including, but not

limited to, a manufactured home or mobilehome, shall be in writing if the contract includes any warranty of the materials or workmanship that extends for any period of time beyond completion of the work.

*(Added by Stats. 1993, Chapter 835 (SB 409).)*

#### Beneficiaries of Warranty

1797.92 For any contract subject to this chapter that is entered into on or after January 1, 1994, the warranty obligations shall inure to the benefit of, and shall be directly enforceable by, all subsequent purchasers and transferees of the residential structure, without limitation, unless the contract contains a clear and conspicuous provision limiting transferability of the warranty.

*(Added by Stats. 1993, Chapter 835 (SB 409).)*

#### Decisions and Penalties

7095. The decision may:

- (a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.
- (b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.
- (c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the registrar.

#### “Licensee” Defined

7096. For the purposes of this chapter, the term “licensee” shall include an individual, copartnership, corporation, joint venture, or any combination or organization licensed under this chapter, and shall also include any named responsible managing officer or member of the personnel of such licensee whose appearance has qualified the licensee under the provisions of Section 7068.

*(Amended Stats. 1995, Chapter 467 (SB 1061).)*

#### Suspension of Additional Licenses

7097. Notwithstanding the provisions of Sections 7121 and 7122, when any license has been suspended by a decision of the registrar pursuant to an accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or 7090.1, any additional license issued under this chapter in the name of the licensee or for which the licensee furnished qualifying experience and appearance

under the provisions of Section 7068, may be suspended by the registrar without further notice.

*(Amended Stats. 1995, Chapter 467 (SB 1061).)*

#### Revocation of Additional Licenses

7098. Notwithstanding the provisions of Sections 7121 and 7122, when any license has been revoked under the provisions of this chapter, any additional license issued under this chapter in the name of the licensee or for which the licensee furnished qualifying experience and appearance under the provisions of Section 7068, may be revoked by the registrar without further notice.

*(Amended Stats. 1995, Chapter 467 (SB 1061).)*

#### Citation

7099. If, upon investigation, the registrar has probable cause to believe that a licensee, or an applicant for a license under this chapter, has committed any acts or omissions which are grounds for denial, revocation, or suspension of license, he or she may, in lieu of proceeding pursuant to this article, issue a citation to the licensee or applicant. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions alleged to have been violated. In addition, each citation may contain an order of correction fixing a reasonable time for correction of the violation or an order, against the licensee only, for payment of a specified sum to an injured party in lieu of correction, and may contain an assessment of a civil penalty.

#### Order of Correction

7099.1. The board shall promulgate regulations covering the formulation of an order of correction which gives due consideration to the time required to correct and the practical feasibility of correction.

### Civil Penalties

7099.2. (a) The board shall promulgate regulations covering the assessment of civil penalties under this article which give due consideration to the appropriateness of the penalty with respect to the following factors:

- (1) The gravity of the violation.
- (2) The good faith of the licensee or applicant for licensure being charged.
- (3) The history of previous violations.

(b) Except as otherwise provided by this chapter, no civil penalty shall be assessed in an amount greater than two thousand dollars (\$ 2,000). A civil penalty not to exceed fifteen thousand dollars (\$ 15,000) may be assessed for a violation of Section 7114 or 7118.

*(Amended by Stats. 1992, Chapter 606 (AB 3240); Amended by Stats. 1996, Chapter 282 (AB 2494).)*

### Appeal

7099.3. Any licensee or applicant for licensure served with a citation pursuant to Section 7099, may appeal to the registrar within 15 working days from service of the citation with respect to violations alleged by the registrar, correction periods, amount of penalties, and the reasonableness of the change required by the registrar to correct the condition.

### Failure to Contest Citation

7099.4. If within 15 working days from service of the citation issued by the registrar, the licensee or applicant for licensure fails to notify the registrar that he or she intends to contest the citation, the citation shall be deemed a final order of the registrar and not be subject to review by any court or agency. The 15-day period may be extended by the registrar for cause.

### Notice of Intent to Contest Citation

7099.5. If a licensee or applicant for licensure notifies the registrar that he or she intends to contest a citation issued under Section 7099, the registrar shall afford an opportunity for a hearing. The registrar shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or penalty, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

### Failure to Comply

7099.6. (a) The failure of a licensee to comply with a citation after it is final is a ground for suspension or revocation of license.

(b) The failure of an applicant for licensure to comply with a citation after it is final is a ground for denial of license.

### Bond Exemption from Civil Penalty

7099.7. No order for payment of a civil penalty shall be made against any bond required pursuant to Sections 7071.5 to 7071.8.

### Advertising Without Proper License in Alphabetical or Classified Directory

7099.10. (a) If, upon investigation, the registrar has probable cause to believe that a licensee, an applicant for a license, or an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, has violated Section 7027.1 by advertising for construction or work of improvement covered by this chapter in an alphabetical or classified directory, without being properly licensed, the registrar may issue a citation under Section 7099 containing an order of correction which requires the violator to cease the unlawful advertising and to notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person.

(b) If the person to whom a citation is issued under subdivision (a) notifies the registrar that he or she intends to contest the citation, the registrar shall afford an opportunity for a hearing, as specified in Section 7099.5, within 90 days after receiving the notification.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after the order is final, the registrar shall inform the Public Utilities Commission of the violation, and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190); amended by Stats. 1992, Chapter 294 (AB 2347).)*

### Asbestos-Related Work; Advertisements; Penalty

7099.11. (a) No person shall advertise, as that term is defined in Section 7027.1, to promote his or her services for the removal of asbestos unless he or she is certified to engage in asbestos-related work pursuant to Section 7058.5, and registered for that purpose pursuant to Section 6501.5 of the Labor Code. Each advertisement shall include that person's certification and registration numbers and shall use the same name under which that person is certified and registered.

(b) The registrar shall issue a notice to comply with the order of correction provisions of subdivision (a) of Section 7099.10, to any person who is certified and registered, as described in subdivision (a), and who fails to include in any advertisement his or her certification and registration numbers.

(c) The registrar shall issue a citation pursuant to Section 7099 to any person who fails to comply with the notice required by subdivision (b), or who advertises to promote

his or her services for the removal of asbestos but does not possess valid certification and registration numbers as required by subdivision (a), or who fails to use in that advertisement the same name under which he or she is certified and registered.

Citations shall be issued and conducted pursuant to Sections 7099 to 7099.10, inclusive.

*(Amended and renumbered by Stats. 1991, Chapter 1160 (AB 2190); amended by Stats. 1992, Chapter 294 (AB 2347).)*

### **Bond Required to Stay Registrar's Decision**

7100. In any proceeding for review by a court, the court may in its discretion, upon the filing of a proper bond by the licensee in an amount to be fixed by the court, but not less than one thousand dollars (\$1,000) or an amount the court finds is sufficient to protect the public, whichever is greater, guaranteeing the compliance by the licensee with specific conditions imposed upon him by the registrar's decision, if any, permit the licensee to continue to do business as a contractor pending entry of judgment by the court in the case. There shall be no stay of the registrar's decision pending an appeal or review of any such proceeding unless the appellant or applicant for review shall file a bond in all respects conditioned as, and similar to, the bond required to stay the effect of the registrar's decision in the first instance.

### **Reinstatement of Suspended or Revoked License**

7102. After suspension of the license upon any of the grounds set forth in this chapter, the registrar may reinstate the license upon proof of compliance by the contractor with all provisions of the decision as to reinstatement or, in the absence of such decision or any provisions therein as to reinstatement, in the sound discretion of the registrar.

After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be reinstated or reissued and a license shall not be issued to any member of the personnel of the revoked licensee found to have had knowledge of or participated in the acts or omissions constituting grounds for revocation, within a minimum period of one year and a maximum period of five years after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of

revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered when extending the minimum one-year period. The criteria shall give due consideration to the appropriateness of the extension of time with respect to the following factors:

- (a) The gravity of the violation.
- (b) The history of previous violations.
- (c) Criminal convictions.

When any loss has been reduced to a monetary obligation or debt, however, the satisfaction of such monetary obligation or debt as a prerequisite for the issuance, reissuance, or reinstatement of a license shall not be required where such monetary obligation or debt has been adjudicated in a bankruptcy proceeding. However, any nonmonetary condition not adjudicated in a bankruptcy proceeding shall be complied with prior to the issuance, the reissuance, or reinstatement of the license.

*(Amended Stats. 1995, Chapter 467 (SB 1061).)*

### **Effect of Disciplinary Action by Another State**

7103. The revocation, suspension, or other disciplinary action of a license to act as a contractor by another state shall constitute grounds for disciplinary action in this state if the individual is a licensee, or applies for a license, in this state. A certified copy of the revocation, suspension, or other disciplinary action by the other state is conclusive evidence of that action.

*(Added by Stats. 1994, Chapter 1135 (AB 3302).)*

### **Notice to Complainant of Resolution of Complaint**

7104. When the board resolves a complaint, the board shall notify the complainant in writing of its action and the reasons for taking that action. The board shall provide the same notice in writing to the contractor provided that the contractor is licensed and the notification would not jeopardize an action or investigation that involves the contractor.

*(Added by Stats. 1994, Chapter 1135 (AB 3302).)*

### **Consolidation in Court Action**

7106. The suspension or revocation of license as in this chapter provided may also be embraced in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor.

## **EXTRACT FROM THE PENAL CODE**

### **Probation Hearing for State Licensee; Participation of State Agency Which Issued License; Definitions**

23. In any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency pursuant to provisions of the Business and Professions Code or the Education Code, the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the

court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee.

For purposes of this section, the term "license" shall include a permit or a certificate issued by a state agency.

For purposes of this section, the term "state agency" shall include any state board, commission, bureau, or division created pursuant to the provisions of the Business and Professions Code or the Education Code to license and regulate individuals who engage in certain businesses and professions.

*(Amended by Stats. 1989, Chapter 388.)*



### Continuing Jurisdiction Over License

7106.5 The expiration of a license by operation of law or by order or decision of the registrar or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

### Abandonment

7107. Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the

licensee as a contractor constitutes a cause for disciplinary action.

### Misuse of Funds

7108. Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, or failure substantially to account for the application or use of such funds or property on the construction project or operation for which such funds or property were received constitutes a cause for disciplinary action.

## EXTRACT FROM THE PENAL CODE

### Wrongful Diversion of Public Funds, a Public Offense

484b. Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment and willfully fails to apply such money for such purpose by either willfully failing to complete the improvements for which funds were provided or willfully failing to pay for services, labor, materials or equipment provided incident to such construction, and wrongfully diverts the funds to a use other than that for which the funds were received, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten

thousand dollars (\$10,000), or by imprisonment in the state prison, or in the county jail not exceeding one year, or by both such fine and such imprisonment if the amount diverted is in excess of one thousand dollars (\$1,000). If the amount diverted is less than one thousand dollars (\$1,000), the person shall be guilty of a misdemeanor.

### False Voucher, Embezzlement

484c. Any person who submits a false voucher to obtain construction loan funds and does not use the funds for the purpose for which the claim was submitted is guilty of embezzlement.

### Prime Building Contractors and Subcontractors; Payment Requirement

7108.5. A prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the

amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil, administrative, or criminal.

This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

*(Amended by Stats. 1990, Chapter 178 (AB 2620); Amended by Stats. 1996, Chapter 712 (SB 1557).)*

**NOTE:** An extract containing Section 10262 of the Public Contract Code can be found in this chapter immediately following Section 7028.15 of the Business and Professions Code.

## EXTRACT FROM THE CIVIL CODE

### Disbursement of Retention Proceeds

3260. (a) This section is applicable with respect to all contracts entered into on or after July 1, 1991, relating to the construction of any private work of improvement. However, the amendments made to this section during the 1992 portion of the 1991-92 Regular Session of the Legislature are applicable only with respect to contracts entered into on or after January 1, 1993, relating to the construction of any private work of improvement. Moreover, the amendments made to this section during the 1993 portion of the 1993-94 Regular Session of the Legislature are applicable only with respect to contracts entered into on or after January 1, 1994, relating to the construction of any private work of improvement.

(b) The retention proceeds withheld from any payment by the owner from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 45 days after the date of completion, the retention withheld by the owner shall be released. "Date of completion," for purposes of this section, means any of the following:

- (1) The date of issuance of any certificate of occupancy covering the work by the public agency issuing the building permit.
- (2) The date of completion indicated on a valid notice of completion recorded pursuant to Section 3093.
- (3) The date of completion as defined in Section 3086.

However, release of retentions withheld for any portion of the work of improvement which ultimately will become the property of a public agency, may be conditioned upon the acceptance of the work by the public agency. In the event of a dispute between the owner and the original contractor, the owner may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

(d) Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) If a bona fide dispute exists between a subcontractor and the original contractor, the original contractor may withhold from that subcontractor with whom the dispute

exists its portion of the retention proceeds. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) Within 10 days of receipt of written notice by the owner from the original contractor or by the original contractor from the subcontractor, as the case may be, that any work in dispute has been completed in accordance with the terms of the contract, the owner or original contractor shall advise the notifying party of the acceptance or rejection of the disputed work. Within 10 days of acceptance of the disputed work, the owner or original contractor, as the case may be, shall release the retained portion of the retention proceeds.

(g) In the event that retention payments are not made within the time periods required by this section, the owner or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(h) It shall be against public policy for any party to require any other party to waive any provision of this section.

(i) This section shall not be construed to apply to retentions withheld by a lender in accordance with the construction loan agreement.

*(Amended by Stats. 1992, Chapter 387 (AB 1352), operative until January 1, 1996; amended by Stats 1993, Chapter 271 (AB 138); amended by Stats. 1994 Chapter 1046 (AB 2962).)*

### Construction Contracts for Private Works of Improvement; Progress Payments

3260.1. (a) This section is applicable with respect to all contracts entered into on or after January 1, 1992, relating to the construction of any private work of improvement.

(b) Except as otherwise agreed in writing, the owner shall pay to the contractor, within 30 days following receipt of a demand for payment in accordance with the contract, any progress payment due thereunder as to which there is no good faith dispute between the parties. In the event of a dispute between the owner and the contractor, the owner may withhold from the progress payment an amount not to exceed 150 percent of the disputed amount. If any amount is wrongfully withheld in violation of this subdivision, the contractor shall be entitled to the penalty specified in subdivision (g) of Section 3260.

(c) Nothing in this section shall be deemed to supersede any requirement of Section 3260 respecting the withholding of retention proceeds.

*(Added by Stats. 1991, Chapter 368 (AB 1608); Amended by Stats. 1999, Chapter 982 (AB 1678).)*

### **Failure to Pay Transportation Charges Submitted by Dump Truck Carrier**

7108.6. A licensed contractor is required to pay all transportation charges submitted by a duly authorized motor carrier of property in dump truck equipment by the 20th day following the last day of the calendar month in which the transportation was performed, if the charges, including all necessary documentation, are submitted by the fifth day following the last day of the calendar month in which the transportation was performed. The payment shall be made unless otherwise agreed to in writing by the contractor and by the duly authorized motor carrier of property in dump truck equipment. In the event that there is a good faith dispute over a portion of the charges claimed, the contractor may withhold payment of up to 150 percent of the disputed amount or an amount otherwise agreed to by the parties. A violation of this section constitutes a cause for disciplinary action under Section 7120 and shall also subject the contractor licensee to a penalty, payable to the carrier, of 2 percent of the amount due per month for every month that payment is outstanding. In an action for the collection of moneys not paid in accordance with this section, the prevailing party shall be entitled to his or her attorney's fees and costs.

This section applies to all private works of improvement and to all public works of improvement.

*(Amended Stats. 1995, Chapter 37 (AB 311); Amended by Stats. 1996, Chapter 712 (SB 1557).)*

### **Departure from Accepted Trade Standards; Departure From or Disregard of Plans or Specifications**

7109. (a) A willful departure in any material respect from accepted trade standards for good and workmanlike construction constitutes a cause for disciplinary action, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect.

(b) A willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner or his or her duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans or specifications, constitutes a cause for disciplinary action.

*(Amended by Stats. 1988, Chapter 1619.)*

### **Failure to Maintain Workers' Compensation Insurance**

7109.2. *(Repealed Stats. 1995, Chapter 467 (SB 1061).)*

### **Violation of Safety Orders**

7109.5. Violation of any safety provision in, or authorized by, Division 5 (commencing with Section 6300) of the Labor Code resulting in death or serious injury to an employee constitutes a cause for disciplinary action.

### **Violations; Disciplinary Action**

7110. Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof, or of the minimum painting standards adopted pursuant to Section 37040 of the Health and Safety Code, or of Section 8505 or 8556 of this code, or of Sections 1689.5 to 1689.8, inclusive, or Sections 1689.10 to 1689.13, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation insurance laws or Unemployment Insurance Code of the state, or violation by any licensee of any provision of the Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells, or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code, constitutes a cause for disciplinary action.

*(Amended by Stats. 1994, Chapter 362 (AB 2719).)*

## **EXTRACT FROM THE BUSINESS AND PROFESSIONS CODE**

### **Removal and Replacement of Pest Damaged Areas; Application of Wood Preservative; Contracting for Performance of Soil Treatment Pest Control Work**

8556. Permissible operations by contractors; disclosure to customer

(a) Licensed contractors acting in their capacity as such, may remove and replace any structure or portions of a structure damaged by wood destroying pests or organisms if that work is incidental to other work being performed on the structure involved or if that work has been identified by a structural pest control inspection report. Licensed contractors acting in their capacity as such may apply wood preservatives directly to end cuts and drill holes of pressure treated wood, and to foundation wood as required by building codes, as well as to fencing and decking, by brush, dip, or spray method and need not obtain a license under this chapter for performance of that work, provided a disclosure in the following form is

submitted to the customer in writing: "The application of a wood preservative is intended to prevent the establishment and flourishing of organisms which can deteriorate wood. If you suspect pest infestation or infection, contact a registered structural pest control company prior to the application of a wood preservative."

These exemptions do not authorize the performance of any other acts defined in Section 8505.

(b) A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests or organisms in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work must be done by a registered structural pest control company.

*(Amended by Stats. 1989, Chapter 1401; amended by Stats. 1998, Chapter 970 (AB 2802); Stats. 1999, Chapter 983 (SB 1307).)*

### **Violation of Labor Code; Requiring Release of Claim for Wages**

7110.1. The requiring of an execution of release of any claim or the causing of the execution of any such release in violation of Section 206.5 of the Labor Code is a cause for disciplinary action.

#### **EXTRACT FROM THE LABOR CODE**

##### **Violations; Release of Claim for Wages**

206.5. No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made. Any release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee and the violation of the provisions of this section shall be a misdemeanor.

##### **Violations; Disciplinary Action**

7110.5. Upon receipt of a certified copy of the Labor Commissioner's finding of a willful or deliberate violation of the Labor Code by a licensee, pursuant to Section 98.9 of the Labor Code, the registrar shall initiate formal disciplinary action against such licensee within 30 days of notification.

##### **Preservation of Records**

7111. (a) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all of his or her transactions as a contractor, and failure to have those records available for inspection by the registrar or his or her duly authorized representative for a period of not less than five years after completion of any construction project or operation to which the records refer, or refusal by a licensee to comply with a written request of the registrar to make the records available for inspection constitutes a cause for disciplinary action.

(b) Failure of a licensee, applicant, or registrant subject to the provisions of this chapter, who without lawful excuse, delays, obstructs, or refuses to comply with a written request of the registrar or designee for information or records, to provide that information or make available those records, when the information or records are required in the attempt to discharge any duty of the registrar, constitutes a cause for disciplinary action.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

##### **Failure of Licensee to Cooperate in Investigation of Complaint; Effect**

7111.1. The failure of, or refusal by, a licensee to respond to a written request of the registrar to cooperate in the investigation of a complaint against that licensee constitutes a cause for disciplinary action.

### **Omission or Misrepresentation of Facts**

7112. Omission or misrepresentation of a material fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an existing license constitutes a cause for disciplinary action.

*(Amended by Stats. 2001, Chapter 728 (SB 724).)*

### **Misrepresentation of Facts; Classification Expunged from Record**

7112.1. Any classification that has been added to an existing license record as a result of an applicant or licensee omitting or misrepresenting a material fact shall be expunged from the license record pursuant to a final order of the registrar evidencing a violation of Section 7112.

*(Added by Stats. 2001, Chapter 728 (SB 724).)*

### **Violation of Contracts**

7113. Failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action.

### **Lawful Obligations, Settlement of**

7113.5. The avoidance or settlement by a licensee for less than their full amount of the lawful obligations of such licensee incurred as a contractor, whether by (a) composition, arrangement, or reorganization with creditors under state law, (b) composition, arrangement, or reorganization with creditors under any agreement or understanding, (c) receivership as provided in Chapter 5 (commencing at Section 564) of Title 7 of Part 2 of the Code of Civil Procedure, (d) assignment for the benefit of creditors, (e) trusteeship, or (f) dissolution constitutes a cause for disciplinary action.

This section shall not apply to an individual settlement of the obligation of a licensee by such licensee with a creditor which is not a part of or in connection with a settlement with other creditors of such licensee.

No disciplinary action shall be commenced against a licensee for avoiding or settling in bankruptcy, or by composition, arrangement, or reorganization with creditors under federal law, the licensee's lawful obligations incurred as a contractor for less than the full amount of such obligations.

### **Unlicensed Persons (Also see Sec. 7118)**

7114. Aiding or abetting an unlicensed person to evade the provisions of this chapter or combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter constitutes a cause for disciplinary action.

**Certifying to Falsified Experience; Effect**

7114.1 Any licensee whose signature appears on a falsified certificate in support of an examinee's experience qualifications, or otherwise certifying to false or misleading experience claims by an applicant, which have been submitted to obtain a contractor's license shall be subject to disciplinary action.

**Violation of This Law**

7115. Failure in any material respect to comply with the provisions of this chapter, or any rule or regulation adopted pursuant to this chapter, or to comply with the provisions of Section 7106 of the Public Contract Code, constitutes a cause for disciplinary action.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

**EXTRACT FROM THE PUBLIC CONTRACT CODE****Form of Required Affidavit**

7106. Any public works contract of a public entity shall include an affidavit, in the following form:

**“NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER  
AND SUBMITTED WITH BID**

State of California

County of \_\_\_\_\_ ss.

\_\_\_\_\_, being first duly sworn, deposes and

says that he or she is \_\_\_\_\_ of \_\_\_\_\_ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.”

**Fraud**

7116. The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action.

**Variance from License as to Name or Personnel**

7117. Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

**Inactive License — Contracting; Penalty**

7117.5. (a) Acting in the capacity of a contractor under any license which has been made inactive, as provided in Section 7076.5, constitutes a cause for disciplinary action.

(b) Acting in the capacity of a contractor under any license that has been suspended for any reason constitutes a cause for disciplinary action.

(c) Acting in the capacity of a contractor under any license that has expired constitutes a cause for disciplinary action if the license is subject to renewal pursuant to Section 7141. The actions authorized under this section shall be separate from, and in addition to, all other remedies either civil or criminal.

*(Amended Stats. 1995, Chapter 467 (SB 1061).)*

### **Contracting out of Classification; Effect**

7117.6. Acting in the capacity of a contractor in a classification other than that currently held by the licensee constitutes a cause for disciplinary action.

### **Unlicensed Persons**

7118. Entering into a contract with a contractor while such contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action.

### **Contractors; Asbestos-Related Inspection; Disclosure of Any Financial Relationship to Entity Performing Corrective Work; Violations; Offense**

7118.4. Contractors; asbestos-related inspection with knowledge of report being required condition for loan or permit concerning the property; disclosure of any financial relationship to entity performing corrective work; violations; offense

(a) If a contractor has made an inspection for the purpose of determining the presence of asbestos or the need for related remedial action with knowledge that the report has been required by a person as a condition of making a loan of money secured by the property, or is required by a public entity as a condition of issuing a permit concerning the property, the contractor shall disclose orally and in writing if it is owned or has any common ownership, or any financial relationship whatsoever, including, but not limited to, commissions or referral fees, with an entity in the business of performing the corrective work.

(b) This section does not prohibit a contractor that has contracted to perform corrective work after the report of another company has indicated the presence of asbestos or the need for related remedial action from making its own inspection prior to performing that corrective work or from making an inspection to determine whether the corrective measures were successful and, if not, thereafter performing additional corrective work.

(c) A violation of this section is grounds for disciplinary action.

(d) A violation of this section is a misdemeanor punishable by a fine of not less than three thousand dollars (\$3,000) and not more than five thousand dollars (\$5,000), or by imprisonment in the county jail for not more than one year, or both.

(e) For the purpose of this section, "asbestos" has the meaning set forth in Section 6501.7 of the Labor Code.

*(Added by Stats. 1988, Chapter 1491.)*

### **Asbestos-Related Work; Contracting with Uncertified Contractor; Fines and Penalties**

7118.5. Any contractor, applicant for licensure, or person required to be licensed, who, either knowingly or negligently, or by reason of a failure to inquire, enters into a contract with another person who is required to be, and is not, certified pursuant to Section 7058.5 to engage in

asbestos-related work, as defined in Section 6501.8 of the Labor Code, is subject to the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor's license, and a fine of not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### **Contracting with Uncertified Person for Removal or Remedial Action; Penalties**

7118.6. Any contractor who, either knowingly or negligently, or by reason of a failure to inquire, enters into a contract with another person who is required to be, and is not certified pursuant to Section 7058.7 to engage in a removal or remedial action, as defined in Section 7058.7, is subject to the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor's license, and a fine of not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### **Lack of Reasonable Diligence**

7119. Wilful failure or refusal without legal excuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence causing material injury to another constitutes a cause for disciplinary action.

### **Withholding Money**

7120. Wilful or deliberate failure by any licensee or agent or officer thereof to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

### **Prohibition Against Association of Suspended or Revoked Licensee**

7121. Any person who has been denied a license, or who has had his license revoked, or whose license is under suspension, or who has failed to renew his license while it was under suspension, or who has been a member, officer, director, or associate of any partnership, corporation, firm or association whose application for a license has been denied, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as such member, officer, director, or associate had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner or qualifying individual of a licensee, and the employment, election or association of such person by a licensee shall constitute grounds for disciplinary action.

### **Responsibility of Disassociated Member, Officer, Director, or Associate for Compliance With Citation**

7121.1. Notwithstanding any other provision of this chapter, the disassociation of any member, officer, director, or associate from the license of any partnership, corporation, firm, or association whose license has been cited pursuant to Section 7099 shall not relieve the member, officer, director, or associate from responsibility for complying with the citation if he or she had knowledge of, or participated in, any of the prohibited acts for which the citation was issued. Section 7121 shall apply to any member, officer, director, or associate of a licensee that fails to comply with a citation after it is final.

*(Added by Stats. 1994, Chapter 192 (AB 3475).)*

### **Qualifier on a Revoked or Suspended License; Prohibitions and Effect**

7121.5. Any person who was the qualifying individual on a revoked license, or of a license under suspension, or of a license that was not renewed while it was under suspension, shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked, or suspended, and the employment, election, or association of such person by a licensee shall constitute grounds for disciplinary action.

### **Participation in Violation**

7122. The performance by any individual, partnership, corporation, firm, or association of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any

licensee other than the individual qualifying on behalf of the individual or entity, if the licensee was a member, officer, director, or associate of such individual, partnership, corporation, firm or association at the time such act or omission occurred, and had knowledge of or participated in such prohibited act or omission.

### **Responsibility for Compliance With Citation**

7122.1 Notwithstanding Section 7068.2 or any other provision of this chapter, the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been cited pursuant to Section 7099 shall not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with the citation. Section 7122.5 shall apply to any qualifying partner, responsible managing officer, or responsible managing employee of a licensee that fails to comply with a citation after it is final.

*(Added by Stats. 1994, Chapter 192 (AB 3475).)*

### **Responsibility of Qualifying Person**

7122.5. The performance by any individual, partnership, corporation, firm, or association of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who at the time such act or omission occurred was the responsible managing employee, qualifying partner, responsible managing officer, or qualifying member of such individual, partnership, corporation, firm, or association, whether or not he had knowledge of or participated in the prohibited act or omission.

### **Conviction as Cause for Disciplinary Action; Evidence**

7123. A conviction of a crime substantially related to the qualifications, functions and duties of a contractor constitutes a cause for disciplinary action. The record of the conviction shall be conclusive evidence thereof.

### **Violation of Overpricing Following an Emergency or Disaster**

7123.5 If a contractor is convicted of violating Section 396 of the Penal Code or any substantially similar local ordinance in connection with the sale, or offer for sale, of repair or reconstruction services, as defined in Section 396 of the Penal Code, the Contractors' State License Board shall take disciplinary action against the contractor, which shall include a suspension of at least six months or the permanent revocation of the contractor's license.

*(Added by Stats. 1993-94, 1st Ex. Sess., Chapter 52 (AB 36 X), eff. November 30, 1994.)*

**EXTRACT FROM THE PENAL CODE****Unlawful Price Increases Following a Declared State of Emergency**

396. (a) The Legislature hereby finds that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods, or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served.

(b) Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. However, a greater price increase shall not be unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price represents no more than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency.

(c) Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, or storm declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, or storm by

the executive officer of any county, city, or city and county, and for a period of 180 days following that declaration, it is unlawful for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation of emergency. However, a greater price increase shall not be unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service during the state of emergency, the price represents no more than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency.

4(d) The provisions of this section may be extended for additional 30-day periods by a local legislative body or the California Legislature if deemed necessary to protect the lives, property, or welfare of the citizens.

4(e) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars (\$ 10,000), or by both that fine and imprisonment.

(f) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

(g) For the purposes of this section:

(1) "State of emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a state of emergency has been declared by the President of the United States or the Governor of California.

(2) "Local emergency" means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a local emergency has been declared by the executive officer or governing body of any city or county in California.

(3) "Consumer food item" means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(4) "Repair or reconstruction services" means services performed by any person who is required to be licensed under the Contractors' State License Law (Chapter 9



(commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

(5) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

(6) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(7) “Building materials” means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(8) “Gasoline” means any fuel used to power any motor vehicle or power tool.

(9) “Transportation, freight, and storage services”

means any service that is performed by any company that contracts to move, store, or transport personal or business property or rents equipment for those purposes.

(10) “Housing” means any rental housing leased on a month-to-month term.

(11) “Goods” has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

(h) Nothing in this section shall preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section.

(i) Any business offering an item for sale at a reduced price immediately prior to the proclamation of the emergency may use the price at which they usually sell the item to calculate the price pursuant to subdivision (b) or (c).

*(Added by Stats. 1993-94, 1st Ex. Sess., Chapter 52 (ABX 36), eff. November 30, 1994; Amended by Stats. 1995, Chapter 91 (SB 975).)*

### **Nolo Contendere**

7124. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

### **Public Disclosure of Complaints**

7124.5. The board shall not make public disclosure of complaints against a licensee except pursuant to a uniform policy if adopted by the Department of Consumer Affairs, after public hearings, which is applicable to all boards, bureaus, commissions, divisions, offices, or officers subject to the jurisdiction of the department.

### **Disclosure of General Information Regarding Complaints Against Licensees**

7124.6. (a) The registrar shall make available to members of the public the date, nature and status of all complaints on file against a licensee that do either of the following:

(1) Have been referred for accusation.

(2) Have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that if proven would present a risk of harm to the public and would be appropriate for

suspension or revocation of the contractor’s license or criminal prosecution.

(b) The board shall create a disclaimer that shall accompany the disclosure of a complaint that shall state that the complaint is an allegation. The disclaimer may also contain any other information the board determines would be relevant to a person evaluating the complaint.

(c) A complaint resolved in favor of the contractor shall not be subject to disclosure.

(d) Except as described in subdivision (e), the registrar shall make available to members of the public the date, nature, and disposition of all legal actions.

(e) Disclosure of legal actions shall be limited as follows:

(1) Citations shall be disclosed from the date of issuance and for five years after the date of compliance, counting only the time the contractor’s license is active.

(2) Accusations that result in suspension or stayed revocation of the contractor’s license shall be disclosed from the date the accusation is filed and for seven years after the accusation has been settled, including the terms and conditions of probation, counting only the time the contractor’s license is active.

(3) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

(f) Subdivisions (a), (b), and (c) shall become operative on July 1, 2002. Subdivisions (d) and (e) shall become operative on July 1, 2002, or as soon thereafter as administratively feasible, as determined by the registrar, but not later than January 2, 2003.

*(Amended, repealed and added by Stats. 2001, Chapter 494 (SB 135), inoperative January 1, 2002, repealed January 1, 2003.)*

## ARTICLE 7.5. WORKERS' COMPENSATION INSURANCE REPORTS

### Reporting Licensee to Registrar

7125. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee have on file a Certificate of Workers' Compensation Insurance or Certification of Self-Insurance. A Certificate of Workers' Compensation Insurance shall be issued and filed by one or more insurers duly licensed to write workers' compensation insurance in this state. A Certification of Self-Insurance shall be issued and filed by the Director of Industrial Relations. If reciprocity conditions exist, as defined in Section 3600.5 of the Labor Code, the registrar shall require the information deemed necessary to assure compliance with this section.

(b) This section does not apply to an applicant or licensee who has no employees provided that he or she files a statement with the board on a form prescribed by the registrar that he or she does not employ any person in any manner so as to become subject to the workers' compensation laws of California. The filing of a false statement constitutes a cause for disciplinary action.

(c) No certificate of workers' compensation insurance, certification of self-insurance, or exemption-certificate is required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) The insurer, including the State Compensation Insurance Fund, shall report to the registrar any cancellation of the policy within 10 days after the cancellation.

*(Amended by Stats. 1995, Chapter 467 (SB 1061); Amended by Stats. 1996, Chapter 331 (AB 3355).)*

### Certificate of Worker's Compensation Insurance; Issuance; Filing

7125.1. (a) The registrar shall accept a certificate required by Section 7125 as of the effective date shown on the certificate, if the certificate is received by the registrar within 90 days after that date, and shall reinstate the license to which the certificate pertains, if otherwise

eligible, retroactive to the effective date of the certificate.

(b) Notwithstanding subdivision (a), the registrar shall accept the certificate as of the effective date shown on the certificate, even if the certificate is not received by the registrar within 90 days after that date, upon a showing by the licensee, on a form acceptable to the registrar, that the failure to have a certificate on file was due to circumstances beyond the control of the licensee. The registrar shall reinstate the license to which the certificate pertains, if otherwise eligible, retroactive to the effective date of the certificate.

*(Amended by Stats. 1992, Chapter 606 (AB 3240); Repealed and added by Stats. 1995, Chapter 467 (SB 1061).)*

### Certificate of Workers' Compensation Insurance; Time of Acceptance by Registrar

7125.2. (a) The failure of a licensee required pursuant to this chapter to maintain workers' compensation insurance shall result in the automatic suspension of the license by operation of law. The registrar shall notify any licensee who fails to maintain workers' compensation that his or her license shall be automatically suspended 30 days from the date of the notice. Within 30 days of a suspension pursuant to this section, the registrar shall provide the licensee with an additional notice that informs the licensee of the suspension date, the cause for suspension, and reinstatement procedures. Reinstatement shall be made at any time following the suspension by showing proof of compliance as specified in Sections 7125 and 7125.1.

(b) With respect to an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, a citation may be issued by the registrar under Section 7028.7 for failure to comply with this section. An opportunity for a hearing as specified in Section 7028.10 will be granted if requested within 90 days of citation.

*(Repealed and Added by Stats. 1995, Chapter 467 (SB 1061).)*

### Violation; Penalty

7126. Any licensee or agent or officer thereof, who violates, or omits to comply with, any of the provisions of this article is guilty of a misdemeanor.

## EXTRACT FROM THE LABOR CODE

### Building Permits; Requirement for Verification of Workers' Compensation

3800. (a) Every county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall require that each applicant for the permit sign a declaration under penalty of perjury verifying workers' compensation coverage or exemption

from coverage, as required by Section 19825 of the Health and Safety Code.

(b) At the time of permit issuance, contractors shall show their valid workers' compensation insurance certificate, or the city or county may verify the workers' compensation coverage by electronic means.

*(Amended by Stats. 1994, Chapter 178 (AB 443); Stats. 1999, Chapter 982 (AB 1678).)*

**EXTRACT FROM THE HEALTH AND SAFETY CODE****Declaration of Worker's Compensation Required on Building Permits**

19825. (a) Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

**BUILDING PROJECT IDENTIFICATION**

Applicant's Mailing Address \_\_\_\_\_

Address of Building \_\_\_\_\_

Owner's Name if Known \_\_\_\_\_

Telephone No. \_\_\_\_\_

Contractor's Name \_\_\_\_\_

Contractor's Mailing Address \_\_\_\_\_

Lic. No. \_\_\_\_\_

Architect or Engineer \_\_\_\_\_

Architect's or Engineer's Address \_\_\_\_\_

Lic. No. \_\_\_\_\_

In addition the city or county may require that there be included, in the building project identification portion of a building permit, the following:

Assessor's Parcel Number \* \_\_\_\_\_

Permit Date \_\_\_\_\_

Permit Number \_\_\_\_\_

Description of Work \_\_\_\_\_

Building Permit Valuation \_\_\_\_\_

\* To be entered by issuing agency.

**LICENSED CONTRACTOR'S DECLARATION**

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my licenses in full force and effect.

License Class \_\_\_\_\_ Lic. No. \_\_\_\_\_

Date \_\_\_\_\_ Contractor \_\_\_\_\_

**OWNER-BUILDER DECLARATION**

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).):

- [ ] I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).
- [ ] I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors' State License Law.).
- [ ] I am exempt under Sec. \_\_\_\_\_, B.& P.C. for this reason:

Date \_\_\_\_\_ Owner \_\_\_\_\_

### WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

\_\_\_\_\_ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

\_\_\_\_\_ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier \_\_\_\_\_

Policy Number \_\_\_\_\_

(This section need not be completed if the permit is for one hundred dollars (\$100) or less).

\_\_\_\_\_ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: \_\_\_\_\_ Applicant: \_\_\_\_\_

**WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

### CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name \_\_\_\_\_

Lender's Address \_\_\_\_\_

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

\_\_\_\_\_  
Signature of Applicant or Agent

\_\_\_\_\_  
Date

(b) The Contractors' State License Board shall provide semiannually, upon the request of city, county, and city and county building departments, a list of all contractors that did not secure payment of compensation in accordance with Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the Labor Code during any period for which workers were employed during the preceeding [FN1] six months.

*(Amended by Stats. 1994, Chapter 178 (AB 443); Amended by Stats. 1996, Chapter 799 (SB 1748); amended by Stats. 1997, Chapter 17 (SB 947); Stats. 1999, Chapter 982 (AB 1678).)*

## ARTICLE 8. REVENUE

### Appropriations

7135. (a) The fees and civil penalties received under this chapter shall be deposited in the Contractors' License Fund. All moneys in the fund are hereby appropriated for the purposes of this chapter.

(b) It is the intent of the Legislature that the board shall use moneys appropriated from the fund to improve its administrative and investigative oversight activities and capacity.

### Allocations for Enforcement of Unlicensed Activity

7135.1. It is the intent of the Legislature that, each fiscal year the board shall designate, if appropriated in the Budget Act and to the extent that it does not conflict with the control language of the Budget Act, no less than 20 percent of the annual amount collected as a result of the fees increased by statutes enacted during the 1993 portion of the 1993-94 Regular Session to be used to enforce the provision of this chapter relative to unlicensed activity.

*(Added by Stats. 1993, Chapter 1188 (SB 148).)*

### Board's Share of Department's Administrative Cost

7136. The director shall designate a sum not to exceed 10 percent of the total income of the Contractors State License Board for each fiscal year to be transferred to the Consumer Affairs Fund as the board's share of the cost of administration of the department.

### Fee Schedule

7137. The amount of the fees prescribed by this chapter shall be fixed by the board according to the following schedule:

(a) The application fee for an original license in a single classification shall be two hundred fifty dollars (\$250).

The application fee for each additional classification applied for in connection with an original license shall be fifty dollars (\$50).

The application fee for each additional classification pursuant to Section 7059 shall be fifty dollars (\$50).

The application fee to replace a responsible managing officer or employee pursuant to Section 7068.2 shall be fifty dollars (\$50).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer or responsible managing employee, or for an

asbestos certification or hazardous substance removal certification, shall be fifty dollars (\$50).

(c) The initial license fee for an active or inactive license shall be one hundred fifty dollars (\$150).

(d) The renewal fee for an active license shall be three hundred dollars (\$300).

The renewal fee for an inactive license shall be one hundred fifty dollars (\$150).

(e) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed more than 30 days after its expiration.

(f) The registration fee for a home improvement salesperson shall be fifty dollars (\$50).

(g) The renewal fee for a home improvement salesperson registration shall be seventy-five dollars (\$75).

(h) The application fee for an asbestos certification examination shall be fifty dollars (\$50).

(i) The application fee for a hazardous substance removal or remedial action certification examination shall be fifty dollars (\$50).

*(Amended by Stats. 1993, Chapter 1188 (SB 148); Stats. 1999, Chapter 982 (AB 1678).)*

### Transfer of Funds for Use of Uniform Construction Cost Accounting Commission; Recommendation; Reimbursement

7137.5. The sum of ten thousand dollars (\$10,000) shall be transferred from the Contractors' License Fund to the Controller for the exclusive use of the California Uniform Construction Cost Accounting Commission.

The commission shall prepare a recommendation to the Legislature for a local public agency source to fund the commission beginning July 1, 1991, which will provide revenue supported by the contract activities represented by the commission's authority.

Upon adoption of this funding program, the commission shall reimburse the Contractors' License Fund in the amount of ten thousand dollars (\$10,000).

*(Added by Stats. 1990, Chapter 1326 (AB 3480), eff. Sept. 25, 1990.)*

### Fees Not Refundable

7138. An application, reapplication, or rescheduling fee paid in connection with an application for an original license, an additional classification, or replacement of a responsible managing officer or employee, as provided in subdivisions (a) and (b) of Section 7137, shall accrete to

the Contractors' License Fund as an earned fee. This fee shall not be refunded, notwithstanding any other provision of law, when the application is filed.

### **Fee Collection Adjustments Not Refundable**

7138.1. Notwithstanding Section 7137, the board, on or before July 1, 1997, shall reduce the amount of fees to be collected pursuant to that section in order to generate revenues sufficient to maintain the board's reserve fund at a level approximately equal to three months of annual authorized board expenditures. Thereafter, similar fee collection adjustments shall be made on a biennial basis.

*(Added by Stats. 1996, Chapter 528 (SB 1597).)*

### **EXTRACT FROM THE UNEMPLOYMENT INSURANCE CODE**

#### **Job Training Program; Waiver of Fees**

10501. Any public assistance recipient who successfully completes a job training program approved under this part shall be exempted from the payment of those fees normally associated with any examination or certification required by state law if the employment opportunity is for the job for which the recipient was trained.

### **ARTICLE 8.5. THE CONSTRUCTION MANAGEMENT EDUCATION SPONSORSHIP ACT OF 1991**

#### **Title of Article**

7139. This article shall be known as the Construction Management Education Sponsorship Act of 1991.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

#### **Need for Construction Management Education Programs**

7139.1. The Legislature hereby finds and declares all of the following:

(a) There is a demand and increasing need for construction management education programs and resources within the postsecondary education system that prepare graduates for the management of construction operations and companies regulated by the Contractors' State License Law and enforced by the Contractors State License Board.

(b) Although construction management programs do exist within the state university system, these programs are woefully underfunded and insufficiently funded to provide training on state-of-the-art management information systems for either graduates or extension programs for continuing education of licensed contractors. Construction industry associations have provided some assistance through direct grants and scholarships, but the industrywide service of these programs and the need for

additional assistance mandates broad based industrywide support.

(c) It is the intent of the Legislature that by enabling contractors to designate a portion of their licensure fee and providing a format for contractors to contribute funds to construction management education, this article will receive broad based industry support. In addition, this article allows the contractor to demonstrate the importance of construction management education. This assistance will enable greater development of construction management curricula and will improve the overall quality of construction by providing construction management training to California licensed contractors and their current and future management personnel.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

#### **Construction Management Education Account; Funding**

7139.2. (a) There is hereby created the Construction Management Education Account (CMEA) as a separate account in the Contractors' License Fund for the purposes of construction management education. Funds in the account shall be available for the purposes of this article upon appropriation by the Legislature.

(b) The Contractors State License Board shall allow a contractor to contribute twenty-five dollars (\$25) to the Construction Management Education Account at the time of the contractor license fee payment. The license fee form shall clearly display this alternative on its face and shall clearly inform the licensee that this provision is a contribution to the Construction Management Education Account and is in addition to the fees.

(c) The board may accept grants from federal, state, or local public agencies, or from private foundations or individuals, in order to assist it in carrying out its duties, functions, and powers under this article. Grant moneys shall be deposited into the Construction Management Education Account.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

#### **Grants; Award of**

7139.3. (a) The board may award grants to qualified public postsecondary educational institutions for the support of courses of study in construction management.

(b) Any organization of contractors, or organization of contractor organizations, incorporated under Division 2 (commencing with Section 5000) of the Corporations Code may request the board to award grants pursuant to subdivision (a) directly to qualified public postsecondary educational institutions of its choice. However, the total amount of money that may be awarded to one public postsecondary educational institution pursuant to subdivision (a) may not exceed an amount equal to 25 percent of the total funds available under this article.

(c) The board shall establish an advisory committee to recommend grant awards. The advisory committee shall

be known as the Construction Management Education Account Advisory Committee and shall consist of 11 members, with at least one representative from each of the following : Associated General Contractors of California, Associated Builders and Contractors, California Building Industry Association, National Electrical Contractors Association, Plumbing-Heating-Cooling Contractor's Association, Southern California Contractor's Association, Associated General Contractors of San Diego, Engineering and Utility Contractors Association, Engineering Contractors Association, California Sheet Metal and Air Conditioning Contractor's Association, and one member representing the California State University and University of California construction management programs accredited by the American Council for Construction Education. Advisory committee member terms shall be for three years and the representatives shall be appointed by each identified group. Members of the advisory committee shall not receive per diem or reimbursement for traveling and other expenses pursuant to Section 103 .

(d) The mission of the Construction Management Education Account Advisory Committee is to maintain, and increase the quality and availability of, education programs for the construction industry. The primary focus is to provide financial resources not now available to accredited construction management programs in California colleges and universities to maintain and upgrade facilities and provide greater access by the industry to modern construction standards and management practices. The advisory committee shall do all of the following:

- (1) Confirm the qualifications of programs applying for grants.
- (2) Award less than full grants when the account has insufficient funds to award full grants to all qualifying programs.
- (3) Receive and review year-end reports of use and impact of funds.
- (4) Affirm applications for American Council for Construction Education accreditation and, when funds are available, award grants to complete the accreditation process.
- (5) Promote close ties between feeder junior colleges and four-year construction management programs.
- (6) Support development of new educational programs with specific emphasis on outreach to the construction industry at large.

*(Added by Stats. 1991, Chapter 1158 (AB 2158); amended by Stats. 1994, Chapter 647 (AB 2934).)*

### Qualified Programs

7139.4. Qualified public postsecondary educational institutions shall provide postsecondary construction management programs at the baccalaureate or higher level that either award or provide one of the following:

- (a) A bachelor of science construction management

degree accredited by the American Council for Construction Education.

(b) A degree with an American Council for Construction Education accredited option, including, but not limited to, engineering technology and industrial technology.

(c) A bachelor of science or higher degree program documenting placement of more than 50 percent of their graduates with California licensed contractors. The placement of a person who holds a master or doctorate degree in the faculty of a construction program shall be counted as though placed with a California licensed contractor.

(d) The development of a construction management curriculum to meet the American Council for Construction Education criteria.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

### Grant Amounts

7139.5. Grants shall be made pursuant to this article to public postsecondary educational institutions that meet the qualifications specified in Section 7139.4 in the following amounts:

(a) Three thousand dollars (\$3,000) per graduate during the past academic year for institutions qualifying under subdivision (a) of Section 7139.4.

(b) Three thousand dollars (\$3,000) per graduate during the past academic year for institutions qualifying under subdivision (b) of Section 7139.4.

(c) Three thousand dollars (\$3,000) per graduate placed with California licensed contractors during the past academic year for institutions qualifying under subdivision (c) of Section 7139.4. These funds shall be used for the purpose of becoming accredited by the American Council for Construction Education and shall be available for up to three years. The board may continue to provide this grant to an institution that in its judgment is meeting the intent of this act and is continuing its development towards accreditation.

(d) Institutions qualifying under subdivision (d) of Section 7139.4 may receive a grant in an amount up to twenty-five thousand dollars (\$25,000) per year for up to two years. Thereafter, these institutions may receive grants based upon the criteria described in subdivisions (a) to (c), inclusive. The board may continue to award a grant to an institution that in its judgment is meeting the intent of this article and is continuing its development towards accreditation.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

### Grants; Use of Funds

7139.6. (a) The grants issued pursuant to Sections 7139.3 and 7139.5 may be used for all of the following:

(1) Instructional materials and support, equipment, curriculum development, and delivery.

(2) Support and development of outreach, continuing

education, and cooperative education or internship programs.

(3) Administrative and clerical support positions.

(4) Faculty recruitment and development, to include support for postgraduate work leading to advanced degrees, visiting lecturer compensation and expenses, teaching assistant positions, and faculty positions.

(b) Grant moneys may also be used to support general classroom and laboratory operating expenses and related administrative supplies, including, but not limited to, reference materials, testing equipment, and equipment maintenance. The list of support items in this subdivision and subdivision (a) are intended to be descriptive rather than limiting. "Support" does not include faculty salary supplements.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

### Report to Legislature

7139.7. The board shall report to the Legislature annually on the condition of the grant program and shall include in the report the names of the public postsecondary educational institutions involved, the amount of funds granted to each of those educational institutions, the purposes for which the funds were granted to each of those recipients, the number of students involved, the number of placements made to the construction industry for the previous academic year, and any other information the board considers relevant to the program.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

### Report to Board

7139.8. The president of each public postsecondary educational institution receiving a grant under this article shall submit, with its respective request for a grant each year following the initial year for which grants are issued, a report to the board delineating the amount of the past grant awarded from the Construction Management Education Account to that institution and the utilization of those funds. The report shall include, but not be limited to, the following:

(a) The number of graduates placed with the California licensed contractors during the previous academic year.

(b) The expected enrollment in construction management courses in the upcoming academic year.

(c) Continuing education and extension courses offered during the previous academic year and their enrollments.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

### Allocation of Funds for Administration

7139.9. The board may allocate up to fifteen thousand dollars (\$15,000) per year from the Construction Management Education Account for the administration of this article.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

### Limitation on Funding

7139.10. It is the intent of the Legislature that state funding for the grants authorized to be awarded under this section be provided only from the Contractors' License Fund to the extent that funds are available in that fund and that no other state funding be provided for those grants.

*(Added by Stats. 1991, Chapter 1158 (AB 2158).)*

## ARTICLE 9. RENEWAL OF LICENSES

### Expiration of Licenses

7140. All licenses issued under the provisions of this chapter shall expire two years from the last day of the month in which the license is issued, or two years from the date on which the renewed license last expired.

To renew a license which has not expired, the licensee shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the registrar and pay the renewal fee prescribed by this chapter. Renewal of an unexpired license shall continue the license in effect for the two-year period following the expiration date of the license, when it shall expire if it is not again renewed.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### Renewal After Expiration

7141. Except as otherwise provided in this chapter, a license may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the registrar, and payment of the appropriate renewal fee. If the license is renewed after the expiration date, the licensee shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which an acceptable renewal application is filed and the delinquency fee is paid pursuant to Section 7137 and the licensee shall be considered as unlicensed during the time between the expiration date and the date the renewal becomes effective. If so renewed, the license shall continue in effect through the date provided in Section 7140 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

If a license is not renewed within three years, the licensee shall make application for a license pursuant to Section 7066.

*(Amended by Stats. 1999, Chapter 982 (AB 1678).)*

### Retroactive Renewal

7141.5. The registrar may grant the retroactive renewal of a license if the licensee requests the retroactive renewal in a petition to the registrar, files an application for renewal on a form prescribed by the registrar, and pays the appropriate renewal fee and delinquency fee prescribed by this chapter. This section shall only apply for a period not to exceed 90 days from the due date and only upon a showing by the contractor that the failure to renew was due to circumstances beyond the control of the licensee.



### Renewal of Suspended License

7143. A license which is suspended for any reason which constitutes a basis for suspension under this chapter, is subject to expiration and shall not be renewed as active. The license may only be renewed as inactive, but such renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

### New License Requirements

7143.5. A person who, by reason of the provisions of Section 7141, is not entitled to renew his license, may apply for and obtain a new license only if he pays all of the fees and meets all of the qualifications and requirements set forth in this chapter for obtaining an original license.

### No Renewal of Revoked License

7144. A revoked license shall be considered as having expired as of the date of revocation and shall not be renewed. To reinstate a revoked license a licensee may apply for reinstatement of the license only if he pays all of the fees and meets all of the qualifications and requirements set forth in this chapter for obtaining an original license.

### Failure to Complete Renewal Form

7145. The registrar may refuse to renew a license for the failure or refusal by the licensee to complete the renewal application prescribed by the registrar. If a licensee fails to return an application for renewal which was rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the applicant may file another application accompanied by the required fee.

The registrar may review and accept the petition of a licensee who disputes the invalidation of his or her application for renewal upon a showing of good cause. This petition shall be received within 90 days from the date the renewal application is deemed abandoned.

### Failure to Resolve Outstanding Liabilities

7145.5. (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest and any fees that may be assessed by the board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board. The refusal or suspension provided by this section shall be applicable only if the registrar has mailed a notice preliminary to the refusal or suspension which indicates that the license will be refused or suspended by a date certain. This preliminary notice shall be mailed to the licensee at least 60 days before the date certain.

(b) In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60 days after the Contractors State License Board has provided the Franchise Tax Board with the information required under Section 30, relating to licensing information which includes the federal employee identification number or social security number.

(c) All versions of the application for contractor's licenses shall include, as part of the application, an authorization by the applicant, in the form and manner mutually agreeable to the Franchise Tax Board and the board, for the Franchise Tax Board to disclose the tax information that is required for the registrar to administer this section. The Franchise Tax Board may from time to time audit these authorizations.

*(Added by Stats. 1990, Chapter 1386 (AB 2282).)*

## ARTICLE 10. HOME IMPROVEMENT BUSINESS

### "Person" Defined

7150. "Person" as used in this article is limited to natural persons, notwithstanding the definition of person in Section 7025.

### Home Improvement Contractor

7150.1. A home improvement contractor, including a swimming pool contractor, is a contractor as defined and licensed under this chapter who is engaged in the business of home improvement either full time or part time. A home improvement contractor shall satisfy all requirements imposed by this article.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190); amended by Stats. 1997, Chapter 888 (AB 1213).)*

### Certification for Home Improvement Contractors

*(Operative until January 1, 2004)*

7150.2. (a) On or before January 1, 1999, the board shall establish a certification program for home improvement contractors. The board shall certify as home improvement contractors individuals, partnerships, corporations, or other combinations or organizations that perform or provide home improvement goods or services, as defined in Section 7151, and that meet the requirements set forth in Section 7150.3.

(b) The board shall publish a booklet containing information relative to the business of a home improvement contractor that shall be distributed to contractors upon request. At the board's discretion, it may charge an amount not to exceed the cost of publication.

(c) On and after July 1, 2000, a contractor may not engage in the business of home improvement or provide home improvement goods or services, as defined in Section 7151, unless the contractor is certified as a home improvement contractor.

(d) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

*(Added by Stats. 1997, Chapter 888 (AB 1213), operative until January 1, 2004.)*

### Qualification for Home Improvement Contractor

*(Operative until January 1, 2004)*

7150.3. (a) In order to qualify for certification as a home improvement contractor, an applicant shall do all of the following:

(1) Apply to the board on a form prescribed by the registrar.

(2) Hold a current and valid contractor's license.

(3) Take and pass an open book examination on the business and contracting skills and laws related to home improvement contracting. In the case of a partnership, corporation, or other entity, in the situation in which the contractor's license has been obtained by appearance of a qualifying individual, that qualifying individual shall take and pass the examination.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

*(Added by Stats. 1997, Chapter 888 (AB 1213), operative until January 1, 2004.)*

### "Home Improvement," "Home Improvement Goods or Services"; Definitions

7151. "Home improvement" means the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property and shall include, but not be limited to, the construction, erection, replacement, or improvement of driveways, swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows, landscaping, fences, porches, garages, fallout shelters, basements, and other improvements of the structures or land which is adjacent to a dwelling house. "Home improvement" shall also mean the installation of home improvement goods or the furnishing of home improvement services.

For purposes of this chapter, "home improvement goods or services" means goods and services, as defined in Section 1689.5 of the Civil Code, which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

## EXTRACT FROM THE CIVIL CODE

### Home Solicitation Contract

1689.5 As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:

(a) "Home solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including any interest or service charges. "Home solicitation contract" does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto, or any contract for repair services with a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if (1) the contract price is less than one hundred dollars (\$100), (2) the negotiation between the parties was initiated by the prospective buyer, and (3) the contract contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer.

(b) "Appropriate trade premises," means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(c) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with this vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in Section 18008 of the Health and Safety Code, nor any goods sold with this mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.

(d) "Services" means work, labor and services, including, but not limited to, services furnished in connection with the repair, restoration, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, that are not connected with the sale of goods or services, as defined herein, nor the sale of insurance that is not

connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the state.

(e) “Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

*(Amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57).)*

### **Cancellation of Home Solicitation Contract**

1689.6. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.

(b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).

(c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract.

(d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

(g) “Personal emergency response unit,” for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.

*(Amended by Stats. 1992, Chapter 145 (AB 2378); amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57).)*

### **Form of Notice of Cancellation**

1689.7. (a) (1) In a home solicitation contract or offer the buyer’s agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraph (2), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(3) The statement required pursuant to this subdivision for the repair or restoration of residential premises damaged by a disaster pursuant to subdivision (c) of Section 1689.6 is as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation” which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

/enter date of transaction/

\_\_\_\_\_  
(Date)

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

\_\_\_\_\_  
/name of seller/

at \_\_\_\_\_  
/address of sellers place of business/

not later than midnight of \_\_\_\_\_  
(Date)

I hereby cancel this transaction \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be Accompanied by the “Notice of Cancellation” required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) Any agreement or offer to purchase services for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be subject to the requirements of subdivision (c) of this section, and shall be accompanied by the

“Notice of Cancellation” required by subdivision (c) of this section, except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(f) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

(g) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

(h) “Contract or sale” as used in subdivision (c) means “home solicitation contract or offer” as defined by Section 1689.5.

*(Amended by Stats. 1993, Chapter 589 (AB 2211); amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57).)*

**Contract Which Provides for Lien**

1689.8. (a) Every home solicitation contract or offer for home improvement goods or services which provides for a lien on real property is subject to the provisions of Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3.

(b) For purposes of this section, “home improvement goods or services” means goods and services, as defined in Section 1689.5, which are bought in connection with the improvement of real property. Such home improvement goods and services include, but are not limited to, burglar alarms, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part of real property whether or not severable therefrom.

**Exemption**

1689.9. Where the goods sold under any home solicitation contract are so affixed to real property as to become a part thereof, whether or not severable therefrom, the buyer shall not have the right to cancel as provided in Section 1689.6 or Section 1689.7 if, subsequent to his signing such contract, he has sold or encumbered such real property to a bona fide purchaser or encumbrancer who was not a party to such sale of goods or to any loan agreement in connection therewith.

**After Cancellation, Seller to Return Down Payment**

1689.10. (a) Except as provided in Sections 1689.6 to 1689.11, inclusive, within 10 days after a home solicitation contract or offer has been canceled, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(b) If the downpayment includes goods traded in, the goods must be tendered in substantially as good condition as when received.

(c) Until the seller has complied with the obligations imposed by Sections 1689.7 to 1689.11, inclusive, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods for any recovery to which he is entitled.

**Buyer to Return Goods**

1689.11. (a) Except as provided in subdivision (c) of Section 1689.10, within 20 days after a home solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he is not obligated to tender at any place other than his own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

(b) The buyer has a duty to take reasonable care of the

goods in his possession both prior to cancellation and during the 20-day period following. During the 20-day period after cancellation, except for the buyer’s duty of care, the goods are at the seller’s risk.

(c) If the seller has performed any services pursuant to a home solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller’s services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

**Invalidity of Waiver of Statute**

1689.12. Any waiver or confession of judgment of the provisions of Sections 1689.5 to 1689.11, inclusive, shall be deemed contrary to public policy and shall be void and unenforceable.

**Notice Not Required for Emergency Situations**

1689.13. Sections 1689.5 to 1689.7, inclusive, Sections 1689.10 to 1689.12, inclusive, and Section 1689.14 shall not apply to a contract that is initiated by the buyer or his or her agent or insurance representative and that is executed in connection with the making of emergency or immediate necessity repairs or services that are necessary for the immediate protection of persons or real or personal property, provided that the buyer furnishes the seller with a separate dated and signed personal statement describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three or seven business days, whichever applies.

*(Amended by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX57).)*

**Void Contracts**

1689.14. (a) Any home solicitation contract or offer for the repair or restoration of residential premises signed by the buyer on or after the date on which a disaster causes damage to the residential premises, but not later than midnight of the seventh business day after this date, shall be void, unless the buyer or his or her agent or insurance representative solicited the contract or offer at the appropriate trade premises of the seller. Any contract covered by this subdivision shall not be void if solicited by the buyer or his or her agent or insurance representative regardless of where appropriate trade premises of the seller whether or not the call is in response to a prior home solicitation.

(b) As used in this section and Section 1689.6, “disaster” means an earthquake, flood, fire, hurricane, riot, storm, tidal wave, or other similar sudden or catastrophic occurrence for which a state of emergency has been declared by the President of the United States or the Governor or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county.

*(Added by Stats. 1993-94, 1st Ex. Sess., Chapter 51 (ABX 57); Amended by Stats. 1995, Chapter 123 (AB 1610) eff. July 18, 1995.)*

**“Home Improvement Contract” Defined**

7151.2. “Home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement as defined in Section 7151, and includes all labor, services,

and materials to be furnished and performed thereunder. “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson and (a) an owner or (b) a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

## EXTRACTS FROM THE CIVIL CODE

### RETAIL SELLER CONTRACTS

**Security Interest in Goods Paid For or Not Sold;  
Security Interest in Real Property for Sale of  
Unattached Goods**

1804.3. (a) No contract other than one for services shall provide for a security interest in any goods theretofore fully paid for or which have not been sold by the seller.

(b) Any contract for goods which provides for a security interest in real property where the primary goods sold are not to be attached to the real property shall be a violation of this chapter and subject to the penalties set forth in Article 12.2 (commencing with Section 1812.6).

(c) This section shall become operative October 1, 1982.

**Undelivered Goods**

1805.6. (a) Notwithstanding the provisions of any contract to the contrary, except as provided in subdivision (b) or (c), no retail seller shall assess any finance charge for goods purchased under a retail installment contract until the goods are in the buyer's possession.

(b) A finance charge may be assessed for such undelivered goods, as follows:

- (1) From the date when such goods are available for pickup by the buyer and the buyer is notified of their availability, or
- (2) From the date of purchase, when such goods are delivered or available for pickup by the buyer within 10 days of the date of purchase.

(c) In the case of a home improvement contract as defined in Section 7151.2 of the Business and Professions Code, a finance charge may be assessed from the approximate date of commencement of the work as set forth in the home improvement contract.

**Finance Charge**

1810.10. (a) Notwithstanding the provision of any contract to the contrary, except as provided in subdivision (b) or (c), no retail seller shall assess any finance charge against the outstanding balance for goods purchased under a retail installment account until the goods are in the buyer's possession.

(b) A finance charge may be assessed against the outstanding balance for such undelivered goods, as follows:

(1) From the date when such goods are available for pickup by the buyer and the buyer is notified of their availability, or

(2) From the date of purchase, when such goods are delivered or available for pickup by the buyer within 10 days of the date of purchase.

(c) In the case of a home improvement contract as defined in Section 7151.2 of the Business and Professions Code, a finance charge may be assessed against the amount financed from the approximate date of commencement of the work as set forth in the home improvement contract.

**Home Improvement Salesperson**

7152. (a) “Home improvement salesperson” is a person employed by a Home Improvement contractor licensed under this chapter to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

(b) The following shall not be required to be registered as home improvement salespersons:

- (1) An officer of record of a corporation licensed pursuant to this chapter.
- (2) A qualifying person, as defined in Section 7068.

(3) A salesperson whose sales are all made pursuant to negotiations between the parties if the negotiations are initiated by the prospective buyer at or with a general merchandise retail establishment that operates from a fixed location where goods or services are offered for sale.

(4) A person who contacts the prospective buyer for the exclusive purpose of scheduling appointments for a registered home improvement salesperson.

(5) A bona fide service repairperson who is in the employ of a licensed contractor and whose repair or service call is limited to the service, repair, or emergency repair initially requested by the buyer of the service.

(Amended by Stats. 1991, Chapter 1160 (AB 2190).)

## Registration Required

7153. (a) It is a misdemeanor for any person to engage in the occupation of salesperson for one or more home improvement contractors within this state without having a registration issued by the registrar for each of the home improvement contractors by whom he or she is employed as a home improvement salesperson. If, upon investigation, the registrar has probable cause to believe that a salesperson is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

It is a misdemeanor for any person to engage in the occupation of salesperson of home improvement goods or services within this state without having a registration issued by the registrar.

(b) Any security interest taken by a contractor, to secure any payment for the performance of any act or conduct described in Section 7151 that occurs on or after January 1, 1995, is unenforceable if the person soliciting the act or contract was not a duly registered salesperson or was not exempt from registration pursuant to Section 7152 at the time the homeowner signs the home improvement contract solicited by the salesperson.

*(Amended by Stats. 1994, Chapter 888 (AB 3269); Stats. 2001, Chapter 728 (SB 724).)*

## Application for Registration

7153.1. The home improvement salesman shall submit to the registrar an application in writing containing the statement that he desires the issuance of a registration under the terms of this article.

The application shall be made on a form prescribed by the registrar and shall be accompanied by the fee fixed by this chapter.

The registrar may refuse to register the applicant under the grounds specified in Section 480.

## Expiration of Registration

7153.2. All registrations issued under the provisions of this article shall expire on a date established pursuant to Section 152.6.

*(Amended by Stats. 1991, Chapter 1160 (AB 2190).)*

## Renewal of Registration

7153.3. (a) To renew a registration, the registrant shall before the time at which the registration would otherwise expire, apply for renewal on a form prescribed by the registrar and pay a renewal fee prescribed by this chapter.

(b) An application for renewal of registration is delinquent if the application is not postmarked by the date on which the registration would otherwise expire. A registration may, however, still be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the registrar and the payment of the renewal fee prescribed by this chapter and a delinquent renewal penalty in the amount of twenty-five

dollars (\$ 25). If a registration is not renewed within three years, the person shall make application for registration pursuant to Section 7153.1.

(c) The registrar may refuse to renew a registration for failure by the registrant to complete the application for renewal of registration. If a registrant fails to return the application rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the person may file a new application for registration pursuant to Section 7153.1. The registrar may review and accept the petition of a person who disputes the abandonment of his or her renewal application upon a showing of good cause. This petition shall be received within 90 days of the date the application for renewal is deemed abandoned.

## Penalty for Employment of Nonregistrant

7154. A home improvement contractor who employs a person to sell home improvement contracts while such person is not registered by the registrar as a home improvement salesman as provided in this article, is subject to disciplinary action by the registrar.

## Disciplinary Action Provided

7155. Violation of any provision of this chapter by a home improvement salesman constitutes cause for disciplinary action. The registrar may suspend or revoke the registration of the home improvement salesman if he is found to be in violation. The disciplinary proceedings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

## Violation; Liability of Contractor

7155.5 Violations of any provisions of this chapter by a home improvement salesperson, likewise constitutes a cause for disciplinary action against the contractor, whether or not he or she had knowledge of or participated in the act or omission constituting violations of this chapter. HISTORY:

*(Amended by Stats. 1997, Chapter 812 (SB 857), Chapter 813 (SB 825).)*

## Salesperson Penalty

7156. It shall be a misdemeanor and a cause for disciplinary action to commit any of the following acts:

(a) For any salesperson to fail to account for or to remit to his or her employing contractor any payment received in connection with any home improvement transaction or any other transaction involving a work of improvement.

(b) For any person to use a contract form in connection with any home improvement transaction or any other transaction involving a work of improvement if the form fails to disclose the name of the contractor principal by whom he or she is employed.

*(Amended by Stats. 1997, Chapter 812 (SB 857), Chapter 813 (SB 825).)*

### Kickback Penalty

7157. (a) Except as otherwise provided in subdivision (b), as a part of or in connection with the inducement to enter into any home improvement contract or other contract, which may be performed by a contractor, no person may promise or offer to pay, credit, or allow to any owner, compensation or reward for the procurement or placing of home improvement business with others.

(b) A contractor or his or her agent or salesperson may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work if the gift does not exceed a value of five dollars (\$ 5) and only one such gift is given in connection with any one transaction.

(c) No salesperson or contractor's agent may accept any compensation of any kind, for or on account of a home improvement transaction, or any other transaction involving a work of improvement, from any person other than the contractor whom he or she represents with respect to the transaction, nor shall the salesperson or agent make any payment to any person other than his or her employer on account of the sales transaction.

(d) No contractor shall pay, credit, or allow any consideration or compensation of any kind to any other contractor or salesperson other than a licensee for or on account of the performance of any work of improvement or services, including, but not limited to, home improvement work or services, except: (1) where the person to or from whom the consideration is to be paid is not subject to or is exempted from the licensing requirements of this chapter, or (2) where the transaction is not subject to the requirements of this chapter.

As used in this section "owners" shall also mean "tenant."

Commission of any act prohibited by this section is a misdemeanor and constitutes a cause for disciplinary action.

*(Amended by Stats. 1997, Chapter 812 (SB 857), Chapter 813 (SB 825).)*

### False Completion Certificate

7158. (a) Any person who shall accept or receive a completion certificate or other evidence that performance of a contract for a work of improvement, including but not limited to a home improvement, is complete or satisfactorily concluded, with knowledge that the document is false and that the performance is not substantially completed, and who shall utter, offer, or use the document in connection with the making or accepting of any assignment or negotiation of the right to receive any payment from the owner, under or in connection with a contract, or for the purpose of obtaining or granting any credit or loan on the security of the right to receive any payment shall be guilty of a misdemeanor and subject to a fine of not less than five hundred dollars (\$ 500) nor more than five thousand dollars (\$ 5,000), or to imprisonment in the county jail for a term of not less than one month nor more than one year, or both.

(b) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by subdivision (a), the court may impose a fine of not less than five hundred dollars (\$ 500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

*(Amended by Stats. 1994, Chapter 175 (SB 634), urgency, eff. July 9, 1994.)*

### EXTRACT FROM THE PENAL CODE

#### Rebates

532e. Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment incident to constructing improvements on real property and willfully rebates any part of the money to or on behalf of anyone contracting with such person, for provision of the services, labor, materials or equipment for which the money was given, shall be guilty of a misdemeanor; provided, however, that normal trade discount for prompt payment shall not be considered a violation of this section.

### Home Improvement Contract Form

7159. Contract requirements; effect of noncompliance; violations

This section applies only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500).

Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, is subject to this section. Every contract and



any changes in the contract subject to this section shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain all of the following:

- (a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.
- (b) The approximate dates when the work will begin and on which all construction is to be completed.
- (c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.
- (d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment may not exceed two hundred dollars (\$200) or 2 percent of the contract price for swimming pools, or one thousand dollars (\$1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is less.
- (e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event may the payment schedule provide for the contractor to receive, nor may the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work within 20 days of the approximate date specified in the contract when work will begin shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.
- (f) A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish

to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the work for which payment has been made.

(g) The requirements set forth in subdivisions (d), (e), and (f) do not apply when the contract provides for the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the registrar covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work may be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. No change-order is enforceable against the person contracting for home improvement work or swimming pool construction unless it clearly sets forth the scope of work encompassed by the change-order and the price to be charged for the changes. Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the contract. Failure to comply with the requirements of this subdivision does not preclude the recovery of compensation for work performed based upon quasi-contract, quantum meruit, restitution, or other similar legal or equitable remedies designed to prevent unjust enrichment.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(l) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section does not prohibit the parties to a home im-

provement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document that is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and

imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(o)(1) An indictment or information against a person who is not licensed, but who is required to be licensed under this chapter, shall be brought, or a criminal complaint filed, for a violation of this section within four years from the date the buyer signs the contract.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within one year from the date the buyer signs the contract.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

*(Amended by Stats. 1994, Chapter 175 (SB 634), eff. July 9, 1994, Chapter 362 (AB 2719); Amended by Stats. 1995, Chapter 91 (SB 975); Amended by Stats. 1996, Chapter 985 (AB 2396); amended by Stats. 1997, Chapter 812 (SB 857), Chapter 813 (SB 825); Stats. 1999, Chapter 982 (AB 1678).)*

#### **Notice in Sale of Home Improvement Goods or Services**

7159.1. In any contract for the sale of home improvement goods or services offered by door-to-door sale that contains or is secured by a lien on real property, the contract shall be accompanied by the following notice in 18-point boldfaced type:

**“WARNING TO BUYER: IF YOU SIGN THE CONTRACT WHICH ACCOMPANIES THIS NOTICE, YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT REQUIRED BY THIS CONTRACT.”**

This notice shall be written in the same language as the rest of the contract. It shall be on a separate piece of paper from the rest of the contract and shall be signed and dated by the buyer. The home improvement contractor or home improvement salesperson shall deliver to the buyer at the time of the buyer's signing and dating of the notice a legible copy of the signed and dated notice. A security interest created in any contract described in this section that does not provide the notice as required by this section shall be void and unenforceable.

This section shall not apply to any of the following:

(a) Any contract that is subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(b) A mechanic's lien established pursuant to Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code.

(c) Any contract that is subject to subdivision (a) of Section 7159.2.

*(Added by Stats. 1998, Chapter 571 (AB 2301).)*

### Security Interest for Home Improvement Goods or Services

7159.2. Contracts for sale of home improvement goods or services; real property lien to secure small contracts; action for damages; attorney's fees and costs

(a) No home improvement goods or services contract of a value of five thousand dollars (\$5,000) or less shall provide for a security interest in real property, except for a mechanic's lien or other interest in property that arises by operation of law. Any lien in violation of this subdivision is void and unenforceable.

(b) When the proceeds of a loan secured by a mortgage on real property are used to fund goods or services pursuant to a home improvement goods or services contract of more than five thousand dollars (\$5,000), the person or entity making the loan shall only pay a contractor under the home improvement goods or services contract from the proceeds of the loan by either of the following methods:

(1) By an instrument payable to the borrower or jointly to the borrower and the contractor.

(2) At the election of the borrower, through a third-party escrow agent pursuant to the terms of a written agreement signed by the borrower, the person or entity making the loan, and the contractor prior to the disbursement.

(c) Any person or entity who violates any provision of this section shall be liable for actual damages suffered by the borrower for damages that proximately result from the violation.

(d) Any person or entity who intentionally or as a pattern or practice violates any provision of this section shall be additionally liable for three times the contract price for the home improvement.

(e) Any person who is a senior citizen or disabled person, as defined in subdivisions (f) and (g) of Section 1761 of

the Civil Code, as part of any action for a violation of this section, may seek and be awarded, in addition to the remedies provided in this section, up to five thousand dollars (\$5,000) as provided in subdivision (b) of Section 1780 of the Civil Code.

(f) The court shall award court costs and attorney's fees to a prevailing plaintiff in an action brought pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

*(Added by Stats. 1998, Chapter 571 (AB 2301); Amended by Stats. 1999, Chapter 512 (SB 187).)*

### Home Improvement Contracts and Estimates; Attached Statements

Operative three months after adoption of specified regulations; see subdivision (b).

7159.3. (a) A home improvement contract and an estimate for home improvement work shall be accompanied by and include all of the following:

(1) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner or tenant to verify the contractor's insurance coverage and status.

(2) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(3) A checklist prepared by the board through regulation setting forth the items that an owner contracting for home improvement should consider when reviewing a proposed home improvement contract.

(b) This section shall become operative three months after the board adopts the regulations referenced in paragraph (1) of subdivision (a).

*(Added by Stats. 2000, Chapter 1005 (SB 2029).)*

## EXTRACT FROM THE CIVIL CODE

### Contractor's Right to Serve 10-Day Stop Work Order

3260.2 Original contractor's right to serve 10-day stop work order on owner in case of nonpayment; Liability for damages from cessation of work; Service of order

(a) If an original contractor is not paid all moneys which are owed pursuant to a written contract for a private work of improvement within 35 days from the date payment is due pursuant to the written contract, and there is no dispute as to the satisfactory performance of that original contractor, the original contractor shall have a right to serve upon the owner a "10-day stop work order" that states that unless all amounts then due the original contractor are paid within 10 days from the date notice is provided under this section, the original contractor will stop work on the project. At least five days before

service upon the owner of a "10-day stop work order," the contractor shall post, in a conspicuous location at the job site and at the main office, if one exists, of the job site, a notice that the original contractor intends to file a 10-day stop work order pursuant to this section. A copy of the written notice shall also be served upon all subcontractors with whom the original contractor has a direct contractual relationship on the project at the same time the notice is served upon the owner. Within five days of receipt of written notice by an original contractor pursuant to this section, the owner shall forward to the construction lender, if any, at the address provided in the construction loan agreement, a copy of the notice by first-class mail.

Upon resolution of the dispute or cancellation of the 10-day

notice by the original contractor, the original contractor shall post, in a conspicuous location at the job site and at the main office, and serve a notice to inform the subcontractors with whom the original contractor has a direct contractual relationship of this resolution or cancellation.

(b) The original contractor's right to stop work pursuant to this section is in addition to any and all other rights the original contractor may have under the law.

(c) Notwithstanding any other provision, the original contractor or his or her surety, or subcontractor or his or her surety, shall not be liable for any delays or damages that the owner or contractor of a subcontractor may suffer as a result of the original contractor serving the owner with a 10-day stop work order, and subsequently stopping work for nonpayment if all of the posting and notice requirements described in subdivision (a) are met. An original contractor's or original subcontractor's liability to a subcontractor or material supplier resulting from the cessation of work under this section shall be limited to the amount of monetary damages the subcontractor or material supplier could recover under the mechanic's lien law for goods and services provided up to the date the subcontractor ceases work, provided that (1) liability shall continue for work performed and materials supplied up to and including the 10-day notice period and not beyond, and (2) this provision does not apply to limit monetary damages for custom work, including materials which have been fabricated, manufactured, or ordered to specifications that are unique to the job.

(d) If the payment is not made within 10 days from the date the notice was served, the original contractor or his or her surety, may seek a judicial determination of liability for the amount not paid for work performed in an

expedited proceeding in the superior court in the county in which the private work improvement is located.

(e) It shall be against public policy to waive the provisions of this section in any written contract for private work of improvement.

(f) This section shall apply to any contract entered into on or after January 1, 1999. However, nothing in this section shall be construed to apply to retentions withheld by a lender in accordance with the construction loan agreement.

(g) The stop work order specified in this section for private works of improvement may be served as follows:

(1) If the person to be notified resides in this state, by delivering the stop work order personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j) of Section 3097.

(2) If the person to be notified of the stop work order does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender.

(3) Service pursuant to this paragraph by certified mail is effective upon receipt. Service by registered mail is effective five days after mailing.

*(Added by Stats. 1998, Chapter 986 (AB 2627).)*

### **False Representation; Penalty**

7160. Any person who is induced to contract for a work of improvement, including but not limited to a home improvement, in reliance on false or fraudulent representations or false statements knowingly made, may sue and recover from such contractor or solicitor a penalty of five hundred dollars (\$500), plus reasonable attorney's fees, in addition to any damages sustained by him by reason of such statements or representations made by the contractor or solicitor.

### **Misrepresentation; False Advertising**

7161. It is a misdemeanor for any person to engage in any of the following acts, the commission of which shall be cause for disciplinary action against any licensee or applicant:

(a) Using false, misleading, or deceptive advertising as an inducement to enter into any contract for a work of improvement, including, but not limited to, any home improvement contract, whereby any member of the public may be misled or injured.

(b) Making any substantial misrepresentation in the procurement of a contract for a home improvement or other work of improvement or making any false promise of character likely to influence, persuade or, induce any person to enter into such a contract.

(c) Any fraud in the execution of, or in the material alteration of any contract, trust deed, mortgage, promissory note, or other document incident to a home improvement transaction or other transaction involving a work of improvement.

(d) Preparing or accepting any trust deed, mortgage, promissory note, or other evidence of indebtedness upon the obligations of a home improvement transaction or other transaction for a work of improvement with knowledge that it specifies a greater monetary obligation than the consideration for the improvement work, which consideration may be a time sale price.

(e) Directly or indirectly publishing any advertisement relating to home improvements or other works of improvement which contains an assertion, representation or statement of fact which is false, deceptive, or misleading,

or by any means advertising or purporting to offer to the general public any such improvement work with the intent not to accept contracts for the particular work or at the price which is advertised or offered to the public, except that any advertisement which is subject to and complies with the existing rules, regulations or guides of the Federal Trade Commission shall not be deemed false, deceptive or misleading.

(f) Any person who violates subdivision (b), (c), (d), or (e) as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment as authorized by this section, the court may impose a fine of not less than five hundred dollars (\$ 500) nor more than twenty-five thousand dollars (\$ 25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

*(Amended by Stats. 1994, Chapter 175 (SB 634), urgency, eff. July 9, 1994.)*

### **Representation with Respect to Trademark or Brand Name, Quality or Size; Inclusion in Writing in Contract or Specifications; Failure to Install**

7162. (a) Notwithstanding any other provision of law, any representation by a person licensed pursuant to this chapter with respect to a trademark or brand name, quality, or size of any goods or materials, in reference to bathroom fixtures, a sink, stove, refrigerator, lighting, carpeting and other floor surfaces, burglar and smoke alarms, paints, textured coatings, siding and other wall surfaces, insulation, roofing, air conditioning and heating systems, and appliances, to be provided by the person pursuant to a home improvement contract, as defined in Section 7151.2, shall set forth, in writing, in the contract or specifications and shall include a description of the goods or materials, including any brand name, model number, or similar designation.

(b) Failure to install the specific goods or materials as represented as required by this section constitutes a cause for disciplinary action under this chapter.

### **Home Improvement Contracts; Loans; Enforceability; Rights and Remedies; Waiver**

7163. (a) No contract for home improvement shall be enforceable against the buyer if the obtaining of a loan for all or a portion of the contract price is a condition precedent to the contract or if the contractor provides financing, or in any manner assists the buyer to obtain a loan or refers the buyer to any person who may loan or arrange a loan for all or a portion of the contract price

unless all of the following requirements are satisfied:

- (1) The third party, if any, agrees to make the loan.
- (2) The buyer agrees to accept the loan or financing.
- (3) The buyer does not rescind the loan or financing transaction, within the period prescribed for rescission, pursuant to the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.) or Regulation Z, if applicable.

(b) Until the requirements of paragraphs (1), (2), and (3) of subdivision (a) are satisfied, it shall be unlawful for the contractor to do any of the following:

- (1) Deliver any property or perform any services other than obtaining building permits or other similar services preliminary to the commencement of the home improvement for which no mechanic's lien can be claimed.
- (2) Represent in any manner that the contract is enforceable or that the buyer has any obligation thereunder.

Any violation of this subdivision shall render the contract unenforceable.

(c) If the contract is unenforceable pursuant to subdivision (a) or subdivision (b), the contractor shall immediately and without condition return all money, property, and other consideration given by the buyer. If the buyer gave any property as consideration and the contractor does not or cannot return it for whatever reason, the contractor shall immediately return the fair market value of the property or its value as designated in the contract, whichever is greater. Nothing herein shall prohibit a contractor from receiving a downpayment otherwise permitted by law provided the contractor returns the downpayment as herein required if the contract is unenforceable pursuant to subdivision (a) or (b).

(d) (1) Except as provided in paragraph (2), the buyer may retain without obligation in law or equity any services or property provided pursuant to a contract that is unenforceable pursuant to subdivision (a) or subdivision (b).

(2) If the contractor has delivered any property to the buyer pursuant to a contract which is unenforceable pursuant to subdivision (a) or subdivision (b), the buyer shall make the property available to the contractor for return provided that all of the following requirements are satisfied:

(A) The property can be practically returned to the contractor without causing any damage to the buyer.

(B) The contractor, at the contractor's expense, first returns to the buyer any money, property, and other consideration taken by the contractor provided that the property is returned in the condition that it was in immediately prior to its taking. If applicable, the contractor shall also, at its expense, reinstall any property taken in the manner in which the property had been installed prior to its taking.

(C) The contractor, at the contractor's expense, picks up the property within 60 days of the execution of the contract.

(e) For the purpose of this section, "home improvement" means "home improvement" as defined in Section 7151.

Goods are included within the definition notwithstanding whether they are to be attached to real property or to be so affixed to real property as to become a part thereof whether or not severable therefrom.

(f) The rights and remedies provided the buyer under this section are nonexclusive and cumulative to all other rights and remedies under other laws.

(g) Any waiver of this section shall be deemed contrary to public policy and shall be void and unenforceable. However, the buyer may waive subdivisions (a) and (b) to the extent that the contract is executed in connection with the making of emergency repairs or services that are necessary for the immediate protection of persons or real or personal property. The buyer's waiver for emergency repairs or services shall be in a dated written statement that describes the emergency, states that the contractor has informed the buyer of subdivisions (a) and (b) and that the buyer waives those provisions, and is signed by each owner of the property. Waivers made on printed forms are void and unenforceable.

(Amended by Stats. 1991, Chapter 1160 (AB 2190); amended by Stats. 1993 Chapter 589 (AB 2211).)

### **Contract and Changes to be in Writing; Notice Regarding Bonds**

7164. (a) Notwithstanding Section 7044, every contract and any changes in a contract, between an owner and a contractor, for the construction of a single-family dwelling to be retained by the owner for at least one year shall be evidenced in writing signed by both parties.

(b) The writing shall contain the following:

(1) The name, address, and license number of the contractor.

(2) The approximate dates when the work will begin and be substantially completed.

(3) A legal description of the location where the work will be done.

(4) The language of the notice required pursuant to Section 7018.5.

(5)(A) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner to verify the contractor's insurance coverage and status.

(B) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(c) The writing may also contain other matters agreed to by the parties to the contract. The writing shall be legible and shall clearly describe any other document which is to be incorporated into the contract. Prior to commencement of any work, the owner shall be furnished a copy of the written agreement, signed by the contractor. The provisions of this section are not exclusive and do not relieve the contractor from compliance with all other applicable provisions of law.

(d) Every contract subject to the provisions of this section

shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point bold type or in all capital letters, stating that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner.

(e) The requirements in paragraphs (5) of subdivision (b) shall become operative three months after the board adopts the regulations referenced in subparagraph (A) of paragraph (5) of subdivision (b).

(Added by Stats. 1991, Chapter 337 (SB 618); Amended by Stats. 2000, Chapter 1005 (SB 2029))

### **Swimming Pool Construction Contract; Financing by Third-Party Lender; Substitute Home Improvement Contract Requirements; Conditions**

7165. The requirements of this section may be substituted for the requirements of paragraphs (1), (2), and (3) of subdivision (a) of Section 7163 if a swimming pool contract is to be financed by a third-party lender and if all the following conditions are met:

(a) The lender has agreed, in writing, to provide financing to the buyer for the maximum estimated construction cost of the swimming pool.

(b) The lender has provided the buyer a written copy of the terms and conditions of the loan for the maximum estimated construction cost of the swimming pool, including the following terms disclosed in the manner required by the federal Truth in Lending Act and Regulation Z: the annual percentage rate, the finance charge, the amount financed, the total number of payments, the payment schedule, and a description of the security interest to be taken by the lender.

(c) The lender has agreed in writing to the following:

(1) To offer to loan the maximum estimated construction cost on the terms and conditions disclosed pursuant to subdivision (b).

(2) If the construction cost of the swimming pool is determined after the completion of excavation to be less than the maximum estimated construction cost, to offer to loan the lesser amount needed to complete the construction of the swimming pool on the same security as, and at an annual percentage rate and monthly payment amount not to exceed, that disclosed in subdivision (b).

The lender's written agreement shall state the duration of the offer, which shall not be less than 15 days following the completion of the excavation of the swimming pool.

(d) The buyer acknowledges receipt of the writings required by subdivisions (a), (b), and (c) and, no sooner than three business days after receiving all of these writings, requests on the form prescribed in subdivision (e) that the contractor begin performance of the swimming pool contract prior to the expiration of any rescission period applicable to the loan.

(e) The request of a buyer, described in subdivision (d), shall be set forth on a document separate and apart from the swimming pool contract and shall contain the following notice in at least 10-point type unless otherwise stated:

**“NOTICE**

Under the law, this contract is not enforceable until:

- (1) A third party agrees to make a loan to finance the construction cost of the swimming pool;
- (2) You agree to accept the loan; and
- (3) You do not cancel the loan within the period prescribed for cancellation under the federal Truth in Lending Act or Regulation Z (usually three business days after the loan is consummated).

Until the cancellation period is over, the contractor cannot deliver any materials or perform any services except preliminary services for which no mechanic’s lien can be claimed.

However, as an alternative to the above, you can ask the contractor to start work and deliver materials before the cancellation period on the loan is over if all of the following have occurred:

- (1) The lender has agreed, in writing, to provide you with financing for up to the maximum estimated construction cost of the swimming pool.
- (2) The lender has provided you with a written copy of the terms and conditions of a loan for the maximum estimated cost, including the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and a description of the security interest to be taken by the lender.
- (3) The lender has agreed in writing to offer these terms and conditions for a period not less than 15 days following completion of the excavation of the swimming pool.
- (4) Three business days have passed since you received the writing mentioned in paragraphs (1), (2), and (3), and you then sign a copy of this form to request that the contractor begin construction of the swimming pool before the cancellation period on your loan is over.

The first day you can sign the request for the contractor to begin construction of the swimming pool is

---

(contractor to insert third business day after buyer receives writings described in subdivisions (a), (b), and (c))

If you sign this request, the contractor will be permitted to immediately begin performance of the contract, and if the contractor is not paid in accordance with the terms of the contract, he or she may file a lien against your property for the value of the labor and materials provided. [This paragraph shall be printed in 12-point type.]

**REQUEST**

I/we request that the contractor immediately start construction of the swimming pool.

---

Date

---

Buyer(s)”

---

(f) The contractor shall provide the buyer a copy of the buyer’s signed request at the time of signature.

(g) This section applies to each buyer who signs the swimming pool contract or the promissory note, other evidence of indebtedness, or security instrument incident to the loan for swimming pool construction.

(h) For the purpose of this section, “business day” has the meaning provided in Section 9 of the Civil Code.

*(Former Section 7165 repealed by Stats. 1991, Chapter 1160. Formerly Section 7167.5; renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

**Application of Article 10 of the Contractors License Law**

7166. The provisions of Article 10 shall not apply to contracts for the construction of swimming pools to be built for the use and enjoyment of other than a single-family unit upon or contiguous to premises occupied only by a single-family unit, nor shall they apply to the construction of swimming pools built as part of an original building plan by the same contractor who builds a single-family dwelling unit on the premises.

*(Former Section 7166 repealed by Stats. 1991, Chapter 1160. Formerly Section 7170; renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### Swimming Pool Construction Contract; Noncompliance Voids

7167. Any contract the primary purpose of which is the construction of a swimming pool which does not substantially comply with the applicable provisions of subdivisions (b), (c), (d), (e), (f), and (h) of Section 7159, shall be void and unenforceable by the contractor as contrary to public policy.

*(Former Section 7167 repealed by Stats. 1991, Chapter 1160. Formerly Section 7172; renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

### Attorney Fee

7168. In any action between a person contracting for construction of a swimming pool and a swimming pool contractor arising out of a contract for swimming pool construction, the court shall award reasonable attorney's fees to the prevailing party.

*(Former Section 7168 repealed by Stats. 1991, Chapter 1160. Formerly Section 7169; renumbered and amended by Stats. 1991, Chapter 1160 (AB 2190).)*

## EXTRACT FROM THE HEALTH AND SAFETY CODE

### ARTICLE 2.5. THE SWIMMING POOL SAFETY ACT

#### Citation

115920. This act shall be known and may be cited as the Swimming Pool Safety Act.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

#### Definitions

115921. As used in this article the following terms have the following meanings:

- (a) "Swimming pool" or "pool" means any structure intended for swimming or recreational bathing that contains water over 18 inches deep. "Swimming pool" includes in-ground and above-ground structures and includes, but is not limited to, hot tubs, spas, portable spas, and nonportable wading pools.
- (b) "Public swimming pool" means a swimming pool operated for the use of the general public with or without charge, or for the use of the members and guests of a private club. Public swimming pool does not include a swimming pool located on the grounds of a private single-family home.
- (c) "Enclosure" means a fence, wall, or other barrier that isolates a swimming pool from access to the home.
- (d) "Approved safety pool cover" means a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials (ASTM), in compliance with standard F1346-91.
- (e) "Exit alarms" means devices that make audible, continuous alarm sounds when any door or window, that permits access from the residence to the pool area that is without any intervening enclosure, is opened or is left ajar. Exit alarms may be battery operated or may be connected to the electrical wiring of the building.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

#### Safety Features

115922. Commencing January 1, 1998, except as provided in Section 115925, whenever a construction permit

is issued for construction of a new swimming pool at a private, single-family home it shall be equipped with at least one of the following safety features:

- (a) The pool shall be isolated from access to a home by an enclosure that meets the requirements of Section 115923.
- (b) The pool shall be equipped with an approved safety pool cover.
- (c) The residence shall be equipped with exit alarms on those doors providing direct access to the pool.
- (d) All doors providing direct access from the home to the swimming pool shall be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.
- (e) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the devices set forth in subdivisions (a) to (d), inclusive, as determined by the building official of the jurisdiction issuing the applicable building permit. Any ordinance governing child access to pools adopted by a political subdivision on or before January 1, 1997, is presumed to afford protection that is equal to or greater than that afforded by any of the devices set forth in subdivisions (a) to (d), inclusive.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

#### Enclosure

115923. An enclosure shall have all of the following characteristics:

- (a) Any access gates through the enclosure open away from the swimming pool, and are self-closing with a self-latching device placed no lower than 60 inches above the ground.
- (b) A minimum height of 60 inches.
- (c) A maximum vertical clearance from the ground to the bottom of the enclosure of two inches.
- (d) Gaps or voids, if any, do not allow passage of a sphere equal to or greater than four inches in diameter.
- (e) An outside surface free of protrusions, cavities, or other physical characteristics that would serve as



handholds or footholds that could enable a child below the age of five years to climb over.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

### Consumer Notice

115924. Any person entering into an agreement to build a swimming pool shall give the consumer notice of the requirements of this article.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

### Inapplicability

115925. The requirements of this article shall not apply to any of the following:

- (a) Public swimming pools.
- (b) Hot tubs or spas with locking safety covers that comply with the American Society for Testing Materials-Emergency Performance Specification (ASTM-ES 13-89).
- (c) Any pool within the jurisdiction of any political subdivision that adopts an ordinance for swimming pool safety that includes requirements that are at least as stringent as this article.

(d) An apartment complex, or any residential setting other than a single-family home.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

### State Social Services

115926. This article does not apply to any facility regulated by the State Department of Social Services even if the facility is also used as the private residence of the operator. Pool safety in those facilities shall be regulated pursuant to regulations adopted therefor by the State Department of Social Services.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

### Interpretation

115927. Notwithstanding any other provision of law, this article shall not be subject to further modification or interpretation by any regulatory agency of the state, this authority being reserved exclusively to local jurisdictions, as provided for in subdivision (e) of Section 115922 and subdivision (c) of Section 115924.

*(Added by Stats. 1996, Chapter 925 (AB 3305).)*

## ARTICLE 11. ASBESTOS CONSULTANTS

### Certification Required

7180. (a) No person shall, on or after July 1, 1992, engage in the practice of an asbestos consultant as defined in Section 7181, or as a site surveillance technician as defined in Section 7182, unless he or she is certified by the Division of Occupational Safety and Health pursuant to regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(b) Certification as an asbestos consultant or site surveillance technician shall not be required when a licensed contractor or registered asbestos abatement contractor takes no more than 12 bulk samples of suspected asbestos-containing material that is required to be removed, repaired, or disturbed as part of a construction project in a residential dwelling solely for any of the following purposes: (1) bid preparation for asbestos abatement; (2) evaluating exposure to its own employees during construction or asbestos abatement; or (3) determining for its own purposes or for the purpose of communicating whether or not a contract for asbestos abatement has been satisfactorily completed. Persons taking samples for the purposes described in this section shall be certified building inspectors under the Asbestos Hazard Emergency Response Act, as specified in Section 763 of Title 40 of the Code of Federal Regulations, appendix (c) to subpart (e). No licensed contractor or asbestos abatement contractor may provide professional health and safety services or perform any asbestos risk assessment. A bid for asbestos abatement may communicate the results and location of sampling for the presence of asbestos and how the

asbestos will be abated. This section does not affect the requirement that asbestos abatement contractors be registered under Section 6501.5 of the Labor Code, nor does it permit a licensed contractor or asbestos abatement contractor to perform clearance air monitoring following asbestos abatement, unless otherwise permitted by law.

*(Added by Stats. 1990, Chapter 1255 (SB 732); Amended by Stats. 1996, Chapter 526 (SB 1486).)*

### Building Owners or Operators; Contracts with Certified Persons

7180.5. When a building owner or operator engages the services of a person to perform asbestos consulting or site surveillance technician activities as defined in Sections 7181 and 7182 after July 1, 1992, the building owner or operator shall contract with a person who is certified by the Division of Occupational Safety and Health pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### "Asbestos Consultant" Defined

7181. An "asbestos consultant," as used in this chapter, means any person who contracts to provide professional health and safety services relating to asbestos-containing material, as defined in subdivision (b) of Section 6501.8 of the Labor Code, including building inspections, abatement project design, contract administration, supervision of site surveillance technicians as defined in Section 7182, sample collections, preparation of asbestos management plans, and clearance air monitoring.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **“Site Surveillance Technician” Defined**

7182. A “site surveillance technician” means any person who acts as an independent onsite representative of an asbestos consultant who monitors the asbestos abatement activities of others, provides asbestos air monitoring services for area and personnel samples, and performs building surveys and contract administration at the direction of an asbestos consultant.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **Notice of Acceptance or Deficiency; Certification**

7183. (a) Within 15 days of receipt of an application for certification pursuant to this article, the division shall inform the applicant in writing either (1) that the application is complete and accepted, or (2) that it is deficient and that additional information, documentation, or examination, specified in the notification, is required to complete the application. Within 45 days of the date of filing of a completed application, the division shall issue to each person who qualifies for certification pursuant to this article, a certification card which shall identify the holder thereof and the type of certification for which he or she has qualified. If the division cannot comply with the notification deadlines specified in this section, the division shall issue a provisional certification card until all procedures specified in this section are completed.

(b) The certification required by this article shall satisfy all certification requirements of the division for asbestos consultants and site surveillance technicians.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **Enforcement; Revocation of Certification**

7183.5. The division shall enforce this article. In the event the division determines that a certified asbestos consultant or site surveillance technician obtained certification under false pretenses, or that a certified asbestos consultant or site surveillance technician acted in a grossly negligent or fraudulent manner, or engaged in repeated acts of negligence, the division shall revoke that person’s certification. The division shall only revoke a certification after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government Code.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **Requirements for Certification; Asbestos Consultants**

7184. A person shall qualify as a certified asbestos consultant by meeting all of the following requirements:

(a) Having any one of the following:

(1) One year of asbestos-related experience, and a bachelor of science degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(2) Two years of asbestos-related experience, and a bachelor’s degree.

(3) Three years of asbestos-related experience, and an associate of arts degree in engineering, architecture, industrial hygiene, construction management, or a related biological or physical science.

(4) Four years of asbestos-related experience and a high school diploma or its equivalent.

(b) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(c) Demonstration of proficiency by achieving a passing score as determined by the division on an examination approved or administered by the division including, but not limited to, the following subjects:

(1) Physical characteristics of asbestos.

(2) Health effects of asbestos.

(3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, disposal, and general industry safety hazards.

(4) State-of-the-art asbestos abatement and control work procedures. The division shall define and incorporate into the certification standards the term “state-of-the-art” for purposes of this article, in the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

(5) Federal Asbestos Hazard Emergency Response Act training information and procedures for inspectors, management planners, and supervisors, as provided for under Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code, or the equivalent, as determined by the division. 5(6) Information concerning industrial hygiene sampling methodology, including asbestos sampling and analysis techniques and recordkeeping.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **Requirements for Certification; Site Surveillance Technicians**

7185. A person shall qualify as a certified site surveillance technician by meeting all of the following requirements:

(a) Having six months of asbestos-related experience under the supervision of an asbestos consultant.

(b) Possession of a high school diploma or equivalent.

(c) Possession of a valid federal Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) certificate for the type of work being performed, or its equivalent, as determined by the division.

(d) Demonstration of proficiency by achieving a passing score, as determined by the division, on an examination

approved or administered by the division covering the following subjects:

- (1) Physical characteristics of asbestos.
- (2) Health effects of asbestos.
- (3) Federal Occupational Safety and Health Administration, Division of Occupational Safety and Health, Environmental Protection Agency, air quality management districts, and State Department of Health Services regulatory requirements, including protective clothing, respiratory protection, exposure limits, personal hygiene, medical monitoring, and general industry safety hazards.
- (4) State-of-the-art asbestos abatement and control work procedures.
- (5) Industrial hygiene sampling methodology, including sampling techniques and recordkeeping.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **Conflicts of Interest; Intent of Legislature**

7187. When a building owner or operator contracts with an asbestos consultant or site surveillance technician for performance of the activities described in Sections 7181 and 7182, that asbestos consultant or site surveillance technician shall not have any financial or proprietary interest in an asbestos abatement contractor hired for the same project. However, this section shall not preclude the hiring of a consultant by a contractor for the purpose of providing health and safety services for the personnel of the contractor. This section shall not apply when a licensed contractor or registered asbestos abatement contractor takes no more than 12 bulk samples of suspected asbestos-containing material that is required to be removed, repaired, or disturbed as part of a construction project in a residential dwelling solely for any of the following purposes: (1) bid preparation for asbestos abatement; (2) evaluating exposure to its own employees during construction or asbestos abatement; or (3) determining for its own purposes or for the purpose of communicating whether or not a contract for asbestos abatement has been satisfactorily completed. Persons taking samples for the purposes described in this section shall be certified building inspectors under the Asbestos Hazard Emergency Response Act, as specified in Section 763 of Title 40 of the Code of Federal Regulations, appendix (c) to subpart (e). No licensed contractor or asbestos abatement contractor may provide professional health and safety services or perform any asbestos risk assessment. A licensed contractor or asbestos abatement contractor may seek compensation for bid preparation, including the cost of laboratory analysis of asbestos-containing material.

It is the intent of the Legislature in enacting this section to make certain that the asbestos-related work performed by a consultant, including, but not limited to, clearance air monitoring, project design, and contract administration, is performed in a manner which provides for independent professional judgment undertaken without consideration

of the financial or beneficial interest of the contractor.

*(Added by Stats. 1990, Chapter 1255 (SB 732); Amended by Stats. 1996, Chapter 526 (SB 1486).)*

### **Penalties**

7189. Any person who engages in the practices of an asbestos consultant or a site surveillance technician, who is not certified pursuant to this article, or who violates Section 7187, is subject to one of the following penalties:

- (a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000).
- (b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any asbestos consultant's or site surveillance technician's certification, and a fine not less than three thousand dollars (\$3,000) or more than five thousand dollars (\$5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment. The division shall only impose these penalties after complying with all of the procedural requirements of Chapter 5 (commencing with Section 11500) of Division 3 of Part 1 of Title 2 of the Government Code.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **Application of Article**

7189.5. This article shall apply to asbestos abatement projects within the meaning of asbestos-related work as defined in Section 6501.8 of the Labor Code, and which involves 100 square feet or more of surface area of asbestos containing material.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

### **Construction of Article**

7189.7. (a) Nothing in this article shall be construed to require agencies of the state to contract with asbestos consultants or site surveillance technicians who are not employees of the state as long as employees of the state who are assigned to perform the activities described in Sections 7181 and 7182 have been certified by the division pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code. Where feasible, the state shall assign a state civil service classification of associate industrial hygienist or senior industrial hygienist to carry out asbestos consultation activities as described in Section 7181 for state-owned and leased buildings. The individuals in the classification assigned shall be certified as required in this article before performing these activities.

(b) Nothing in this article shall be construed to require attorneys who provide legal advice on asbestos-related matters to building owners or operators to be certified by the division pursuant to the regulations required by subdivision (b) of Section 9021.5 of the Labor Code.

*(Added by Stats. 1990, Chapter 1255 (SB 732).)*

## ARTICLE 12. PROHIBITIONS

### Use of Name or Position of Public Official in Advertisement or Promotional Material; Disclaimer

7190. (a) The name or position of a public official may not be used in an advertisement or any promotional material by a person licensed under this chapter, without the written authorization of the public official. A printed advertisement or promotional material that uses the name or position of a public official with that public official's written authorization, shall also include a disclaimer in at least 10-point roman boldface type, that shall be in a color or print which contrasts with the background so as to be easily legible, and set apart from any other printed matter. The disclaimer shall consist of a statement that reads "The name of (specify name of public official) does not imply that (specify name of public official) endorses this product or service in (his or her) official capacity and does not imply an endorsement by any governmental entity." If the advertisement is broadcast, this statement shall be read in a clearly audible tone of voice.

(b) For purposes of this section, "public official" means a member, officer, employee, or consultant of a local

government agency, as defined in Section 82041 of the Government Code, or state agency, as defined in Section 82049 of the Government Code.

*(Added by Stats. 1994, Chapter 1135 (AB 3302).)*

### Title of Provision for Arbitration of Disputes in Contract for Work on Specified Residential Property

7191. (a) If a contract for work on residential property with four or fewer units contains a provision for arbitration of a dispute between the principals in the transaction, the provision shall be clearly titled "ARBITRATION OF DISPUTES."

If a provision for arbitration is included in a printed contract, it shall be set out in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(b) Immediately before the line or space provided for the parties to indicate their assent or nonassent to the arbitration provision described in subdivision (a), and immediately following that arbitration provision, the following shall appear:

**"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY." "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

If the above provision is included in a printed contract, it shall be set out either in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(c) A provision for arbitration of a dispute between a principal in a contract for work on a residential property

with four or fewer units that does not comply with this section may not be enforceable against any person other than the licensee.

(d) This section does not limit the board's authority to investigate complaints or to discipline a licensee for violations of this code.

*(Added by Stats. 1994, Chapter 1135 (AB 3302).)*

## EXTRACT FROM THE CIVIL CODE

### Unlawful Practices

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

- (1) Passing off goods or services as those of another.
- (2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

- (6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact.
- (9) Advertising goods or services with intent not to sell them as advertised.
- (10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.
- (11) Advertising furniture without clearly indicating that it is unassembled if that is the case.
- (12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller.
- (13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.
- (14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.
- (15) Representing that a part, replacement, or repair service is needed when it is not.
- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.
- (17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
- (18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.
- (19) Inserting an unconscionable provision in the contract.
- (20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (1) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (2) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses which are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code where more than 50 percent of purchases are made at the specific price set forth in the advertisement.
- (21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.
- (22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name

of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(23) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (1) there was an agency relationship between the party who engaged in home solicitation and the third party or (2) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, "mortgage broker or lender" includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the

Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. Nothing in this paragraph shall have any effect on the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

*(Amended by Stats. 1995, Chapter 255 (SB 320); Amended by Stats. 1996, Chapter 684 (SB 2045).)*

## Definitions

7195. For purposes of this chapter, the following definitions apply:

- (a) (1) “Home inspection” is a noninvasive, physical examination, performed for a fee in connection with a transfer, as defined in subdivision (e), of real property, of the mechanical, electrical, or plumbing systems or the structural and essential components of a residential dwelling of one to four units designed to identify material defects in those systems, structures and components. “Home inspection” also includes any consultation regarding the property that is represented to be a home inspection or any confusingly similar term.
- (2) “Home inspection,” if requested by the client, may include an inspection of energy efficiency. Energy efficiency items to be inspected may include the following:
  - (A) A noninvasive inspection of insulation R-values in attics, roofs, walls, floors, and ducts.
  - (B) The number of window glass panes and frame types.
  - (C) The heating and cooling equipment and water heating systems.
  - (D) The age and fuel type of major appliances.
  - (E) The exhaust and cooling fans.
  - (F) The type of thermostat and other systems.
  - (G) The general integrity and potential leakage areas of walls, window areas, doors, and duct systems.
  - (H) The solar control efficiency of existing windows.
- (b) A “material defect” is a condition that significantly affects the value, desirability, habitability, or safety of the dwelling. Style or aesthetics shall not be considered in determining whether a system, structure, or component is defective.
- (c) A “home inspection report” is a written report prepared for a fee and issued after a home inspection. The report clearly describes and identifies the inspected systems, structures, or components of the dwelling, any material defects identified, and any recommendations regarding the conditions observed or recommendations for evaluation by appropriate persons.
- (d) A “home inspector” is any individual who performs a home inspection.
- (e) “Transfer” is a transfer by sale, exchange, installment land sales contract, as defined in Section 2985 of the Civil Code, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

*(Added by Stats. 1996, Chapter 338 (SB 258); Amended by Stats. 2001, Chapter 773 (AB 1574).)*

## Duties

7196. It is the duty of a home inspector who is not licensed as a general contractor, structural pest control operator, or architect, or registered as a professional engineer to conduct a home inspection with the degree of care that a reasonably prudent home inspector would exercise.

*(Added by Stats. 1996, Chapter 338 (SB 258).)*

## Application

7196.1. (a) Nothing in this chapter shall be construed to allow home inspectors who are not registered engineers to perform any analysis of the systems, components, or structural integrity of a dwelling that would constitute the practice of civil, electrical, or mechanical engineering, or to exempt a home inspector from Chapter 3 (commencing with Section 5500), Chapter 7 (commencing with Section 6700), Chapter 9 (commencing with Section 7000), or Chapter 14 (commencing with Section 8500) of Division 3. (b) This chapter does not apply to a registered engineer, licensed land surveyor, or licensed architect acting pursuant to his or her professional registration or license, nor does it affect the obligations of a real estate licensee or transferor under Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 3 of Division 2 of, or Article 2 (commencing with Section 2079) of Chapter 3 of Title 6 of Part 4 of Division 3 of, the Civil Code.

*(Added by Stats. 1996, Chapter 338 (SB 258).)*

## Unfair Practices

7197. It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

- (a) To perform or offer to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector’s company, has prepared a home inspection report in the past 12 months.
- (b) Inspect for a fee any property in which the inspector, or the inspector’s company, has any financial interest or any interest in the transfer of the property.
- (c) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or agent, for the referral of any business to the inspector or the inspection company.
- (d) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.
- (e) A home protection company that is affiliated with or that retains the home inspector does not violate this section if it performs repairs pursuant to claims made under the home protection contract.

*(Added by Stats. 1996, Chapter 338 (SB 258).)*

## Public Policy

7198. Contractual provisions that purport to waive the duty owed pursuant to Section 7196, or limit the liability of the home inspector to the cost of the home inspection report, are contrary to public policy and invalid.

*(Added by Stats. 1996, Chapter 338 (SB 258).)*

## Statute of Limitation

7199. The time for commencement of a legal action for breach of duty arising from a home inspection report shall not exceed four years from the date of the inspection.

*(Added by Stats. 1996, Chapter 338 (SB 258).)*

*(For a summary of changes to the Business and Professions Code resulting from the 2001 Legislative Session, please see page v.)*